GUIDE TO

CENTRAL INTELLIGENCE AGENCY

STATUTES AND LAW

PART I

extracts from

NATIONAL SECURITY ACT OF 1947,
as amended

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July 1971

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July 1971

NATIONAL SECURITY ACT OF 1947,
as amended

(61 Stat. 495, P.L. 80-253, July 26, 1947;[1]
63 Stat. 578, P.L. 81-216, August 10, 1949;
65 Stat. 373, P.L. 82-165, October 10, 1951;
67 Stat. 19, P.L. 83-15, April 4, 1953;
68 Stat. 1226, P.L. 83-779, September 3, 1954;
70A Stat. 679, P.L. 84-1028, August 10, 1956;
78 Stat. 484, P.L. 88-448, August 10, 1964)

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

SECTION 101. (a) There is established a council to be known as the National Security Council[2] (hereinafter in this section referred to as the "Council"). 50 U.S.C.A. 402(a)

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—[3]

(1) the President;
(2) the Vice President;[4]
(3) the Secretary of State;
(4) the Secretary of Defense;
(5) the Director for Mutual Security [now abolished];[5]
(6) the Chairman of the National Security Resources Board [now the Director of the Office of Emergency Preparedness];[6] and
(7) the Secretaries and Under Secretaries of other executive departments and of the military departments,[7] the chairman of the Munitions Board [now abolished];[8] and the

Chairman of the Research and Development Board [now abolished],[9] when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.[10]

CENTRAL INTELLIGENCE AGENCY

50 U.S.C.A. 403

SEC. 102. (a) There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence [11] who shall be the head thereof, and with a Deputy Director of Central Intelligence [12] who shall act for, and exercise the powers of, the Director during his absence or disability. The Director [13] and the Deputy Director [14] shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services, whether in an active or retired status, or from among individuals in civilian life: *Provided, however,* That at no time shall the two positions of the Director and Deputy Director be occupied simultaneously by commissioned officers of the armed services, whether in an active or retired status.[15]

(b)(1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then—

(A) in the performance of his duties as Director, or Deputy Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit, or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1) of this subsection, the appointment to the office of Director, or Deputy Director, of a

commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving in the office of Director, or Deputy Director, continue to hold rank and grade not lower than that in which serving at the time of his appointment and to receive the military pay and allowances (active or retired, as the case may be, including personal money allowance) payable to a commissioned officer of his grade and length of service for which the appropriate department shall be reimbursed from any funds available to defray the expenses of the Central Intelligence Agency. He also shall be paid by the Central Intelligence Agency from such funds an annual compensation at a rate equal to the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances.[16]

(3) The rank or grade of any such commissioned officer shall, during the period in which such commissioned officer occupies the office of Director of Central Intelligence, or Deputy Director of Central Intelligence, be in addition to the numbers and percentages otherwise authorized and appropriated for the armed service of which he is a member.[17]

(c) Notwithstanding the provisions of section 652 [now 7501] of Title 5,[18] or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States,[19] but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—[20]

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided,* That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further,* That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further,* That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;[21]

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however,* That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central

Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

(f) Effective when the Director first appointed under subsection (a) of this section has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946)[22] shall cease to exist; and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist.[22A] Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.[23]

TITLE III—MISCELLANEOUS

ADVISORY COMMITTEES AND PERSONNEL

SEC. 303. (a) The Secretary of Defense,[24] the Director of the Office of Defense Mobilization [now abolished],[25] the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary,[26] are authorized to appoint such advisory committees and to employ, consistent with other provisions of sections 171-171n, 172-172j, 181-1, 182-1, 411a, 411b, and 626-626d of Title 5,[27] and sections 401-403, 404, and 405 of this title,[28] such part-time advisory personnel[29] as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $50[30] for each day of service, as determined by the appointing authority. 50 U.S.C. 405

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of sections 281 [now 203],

283 [now 205], or 284 [now 207] of Title 18,[31] unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

EFFECTIVE DATE

SEC. 310. (a) The first sentence of section 202(a) and sections 1, 2, 307, 308, 309, and 310 shall take effect immediately upon the enactment of this Act.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.[32]

[1] Legislative history materials include:
Sen. Rep. No. 239, 80th Cong., 1st Sess., June 5, 1947;
H.R. Rep. No. 961, 80th Cong., 1st Sess., July 16, 1947; and
H.R. Rep. No. 1051 (Conference Report), 80th Cong., 1st Sess., July 24, 1947.

[2] Reorganization Plan No. 4 of 1949 (63 Stat. 1067, 5 U.S.C.A., App., p. 222), effective August 20, 1949, transferred the National Security Council, together with its "functions, records, property, personnel, and unexpended balances of appropriations, allocations, and other funds (available or to be made available)," to the Executive Office of the President. The latter Office was established by Reorganization Plan No. 1 of 1939 (53 Stat. 1423, 5 U.S.C.A., App., p. 121), effective July 1, 1939.

[3] As a result of the statutes and reorganization plans indicated in Footnotes 4 through 9, the current membership of the Council is not accurately stated by the current language of the statute as set forth above. The officials who now are members of the Council are:
The President;
The Vice President;
The Secretary of State;
The Secretary of Defense; and
The Director, Office of Emergency Preparedness
See Footnote 10 concerning the attendance of the Director of Central Intelligence and other officials at Council meetings.

[4] Under the 1947 Act, the Vice President was not a member. He became a member by the enactment of section 3 of the National Security Act Amendments of 1949 (63 Stat. 578, P.L. 81-216, August 10, 1949).

[5] When the Act was enacted in 1947, the position of "Director for Mutual Security" did not exist. The position was established, and its incumbent made a member of the Council, by section 501 of the Mutual Security Act of 1951 (65 Stat. 373, P.L. 82-165, October 10, 1951). The office of the Director for Mutual Security was abolished and the functions of the Director as a member of the Council were transferred to the Director of the Foreign Operations Administration by Reorganization Plan No. 7 of 1953 (67 Stat. 639), effective August 1, 1953. The office of the Director of the Foreign Operations Administration and the membership of the Director on the National Security Council were abolished by section 303 of Executive Order 10610 (3 C.F.R., 1954-1958 Comp., p. 250, May 9, 1955), effective June 30, 1955.

[6] The functions of the Chairman of the National Security Resources Board as a member of the Council were transferred to the Director of the Office of Defense Mobilization by section 2 of Reorganization Plan No. 3 of 1953 (67 Stat. 634, 5 U.S.C.A., App., p. 295), effective June 12, 1953. The Office of Defense Mobilization was consolidated into the Office of Defense and Civilian Mobilization by section 2 of Reorganization Plan No. 1 of 1958 (72 Stat. 1799, 5 U.S.C.A., App., p. 336), effective July 1, 1958, and redesignated the "Office of Civil and Defense Mobilization" by P.L. 85-763 (72 Stat. 861, August 26, 1958), as the "Office of Emergency Planning" by section 1 of P.L. 87-296 (75 Stat. 630, September 22, 1961), and as the "Office of Emergency Preparedness" by section 402 of P.L. 90-608 (82 Stat. 1190, October 21, 1968).

[7] Under the 1947 Act, the Secretaries of the Army, Navy, and Air Force also were members. Their memberships were abolished by the National Security Act Amendments of 1949 (Footnote 4). Item 7 of section 101(a) authorizes the President to appoint the secretaries of the military departments as members but none has done so.

[8] The office of the Chairman of the Munitions Board was abolished and the functions of the Board transferred to the Secretary of Defense, by Reorganization Plan No. 6 of 1953 (67 Stat. 638, 5 U.S.C.A., App., p. 304), effective June 30, 1953.

[9] The office of the Chairman of the Research and Development Board was abolished, and the functions of the Board were transferred to the Secretary of Defense, by Reorganization Plan No. 6 of 1953 (Footnote 8).

[10] No members have been appointed by any President under the authority of item 7 section 101(a). Various other officials have been invited by the Presidents to participate regularly in Council meetings, most notably the Secretary of the Treasury, the Attorney General and the Director, Bureau of the Budget. At the first meeting of the Council, on September 18, 1947, the effective date of the National Security Act, it was agreed that the Director of Central Intelligence should attend all Council meetings as an advisor and observer. Accordingly, the Director has atttended regularly in that capacity from the inception of the Council. Subsection 7(b) of the National Security Act Amendments of 1949 (Footnote 4) designated the Joint Chiefs of Staff as "the principal military advisers to . . . the National Security Council . . . ." The Chairman of the Joint Chiefs thereafter has attended Council meetings on a regular basis.

[11] The duties, powers and responsibilities of the Director of Central Intelligence, and those of the Central Intelligence Agency, prescribed by section 102 of the National Security Act include certain interagency responsibilities and coordinating authority of the Director. These, together with the title "Director of Central Intelligence" and the relationship of the Agency to the National Security Council and the President, as prescribed by sections 101(a) and 102, establish the Director as the principal foreign intelligence officer of the government. He has been so designated by various actions of the Presi-

(Footnote 11—Continued)
dents. The primary Presidential action in this regard is a letter of January 16, 1962, from President Kennedy to Director John A. McCone:

> In coordinating and guiding the total intelligence effort, you will serve as Chairman of the United States Intelligence Board, with a view to assuring the efficient and effective operation of the Board and its associated bodies. In this connection I note with approval that you have designated your deputy to serve as a member of the Board, thereby bringing to the Board's deliberations the relevant facts and judgments of the Central Intelligence Agency.
>
> As directed by the President and the National Security Council, you will establish with the advice and assistance of the United States Intelligence Board the necessary policies and procedures to assure adequate coordination of foreign intelligence activities at all levels.
>
> With the heads of the Departments and Agencies concerned you will maintain a continuing review of the programs and activities of all U.S. agencies engaged in foreign intelligence activities with a view to assuring efficiency and effectiveness and to avoiding undesirable duplication.

See also Public Papers of the Presidents of the United States, John F. Kennedy (1961), p. 753, item 458; Public Papers of the Presidents of the United States, Lyndon B. Johnson, Vol. I (1965), p. 458, item 209 (Note). And see President Nixon's memorandum of March 24, 1969, for the Secretary of State, the Secretary of Defense, the Director of Central Intelligence, and the Chairman, President's Foreign Intelligence Advisory Board, quoted in full at page 68 of PART IV:

> I shall look to the Director of Central Intelligence to continue to provide coordination and guidance to the total foreign intelligence activities of the United States with the view to assuring a comprehensive and integrated effort on the part of the United States Government agencies.

The Director was a member of the Operations Coordinating Board, established by Executive Order 10483 (3 C.F.R., 1949-1953 Comp., p. 968, September 2, 1953) and continued in operation by Executive Order 10700 (3 C.F.R., 1954-1958 Comp., p. 360, February 25, 1957), until the Board was abolished by Executive Order 10920 (3 C.F.R., 1959-1963 Comp., p. 446, February 18, 1961).

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[12] The Act of 1947 did not include the position of Deputy Director and for several years thereafter there was no "provision of law establishing a Deputy Director with statutory authority to act for the Director or to perform such functions as the Director may assign to him" (H.R. Rep. No. 83-219, March 30, 1953). The existence of the position was given statutory recognition by the enactment of the Executive Pay Act of 1949 (63 Stat. 880, P.L. 81-359, October 15, 1949), which prescribed compensation for the position. This feature proved troublesome when in early 1943 the Agency desired the establishment of the office by statute, with statutory authority, and the President intended to appoint an Air Force lieutenant general (Charles P.

(Footnote 12—Continued)
Cabell) as Deputy Director. It was felt, at least in some quarters, that existing law (then 10 U.S.C.A. 576, now 10 U.S.C.A. 973) prohibited the appointment of General Cabell unless he vacated his commission. The view was that since section 576 prohibited the appointment of a commissioned officer to an appointive office, the reference to the position of Deputy Director in the Executive Pay Act of 1949 "created the statutory office of Deputy Director, at least to the extent that no officer of the Armed Forces could be appointed to that position" (Congressional Record, April 1, 1953, p. 2742). Senator Saltonstall, in fact, stated that the purpose of the bill was to make possible the appointment of a commissioned officer of the Armed Forces as Deputy Director "without the officer concerned having to relinquish his commission and cease being a military officer" (Congressional Record, March 18, 1953, p. 2072). And finally, it was believed the establishment of the office by statute, with the incumbent to be appointed by the President by and with the advice and consent of the Senate, would do much to enhance the standing, authority and efficiency of the Agency. Accordingly, an appropriate amendment to the National Security Act was sought, and enacted on April 4, 1953 (67 Stat. 19, P.L. 83-15). The new act also amended subsections 102(a) and (b) to establish the office of Deputy Director, to direct the Deputy Director to "act, and exercise the powers of, the Director during his absence or disability," and to cause the remainder of these subsections to apply also with respect to the office of Deputy Director. See also Footnote 15.

A decision of the Comptroller General in 1962 affirmed the authority of the Deputy Director to perform the duties of the Director. "Our view is that it is inherent in the statutory position of the Deputy Director that the holder will assist the Director in the performance of his duties, including those vested by law in the Director." See 41 Comp. Gen. 429, January 2, 1962, also reprinted at page 195 of PART VIII. See also the action of the Director delegating to the Deputy Director "all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, . . . except for any authorities the delegation of which is prohibited by law" (Footnote 47, PART II).

An amendment of July 2, 1953 (67 Stat. 136, P.L. 83-102, 5 U.S.C.A. 6301), to the Annual and Sick Leave Act of 1951 (65 Stat. 679, P.L. 82-233, October 30, 1951, 5 U.S.C.A. 6301 et seq.) exempts from the Act any officer in the executive branch of the government "who is appointed by the President and whose rate of basic pay exceeds the highest rate payable" under the General Schedule established by the Classification Act of 1949 (5 U.S.C.A. 5101 et seq.). The amendment also authorizes the President to exempt officials from the provisions of the Act. The premise of the amendment is that the duties and responsibilities of certain officials are so important that "such officials never completely divest themselves of their responsibilities even during periods of vacation or illness" (Sen. Rep. No. 83-294, May 19, 1963, p. 1). President Eisenhower, by Executive Order 10540 (3 C.F.R. 1954-1958 Comp., p. 196, June 29, 1954), designated certain officials as exempt from the Act, including the Deputy Director. The President's action thus served to recognize and

(Footnote 12—Continued)
confirm the importance of the duties of the Deputy Director. Since the rate of basic pay of the Deputy Director now exceeds the highest rate payable under the General Schedule and the Deputy Director is appointed by the President, the Deputy Director is exempt from the terms of the Annual and Sick Leave Act and the Executive Order no longer has effect as to the holder of that office.

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[13] The following men have been appointed Director of Central Intelligence under the authority of the Act, and served in that capacity for the periods indicated:

Rear Admiral Roscoe Henry Hillenkoetter, USN
September 26, 1947–October 7, 1950

Lieutenant General (later General) Walter Bedell Smith, USA
October 7, 1950–February 9, 1953

Allen Welsh Dulles
February 26, 1953–November 29, 1961

John Alex McCone
November 29, 1961–April 28, 1965

Vice Admiral William Francis Raborn, Jr., USN (Retired)
April 28, 1965–June 30, 1966

Richard Helms
June 30, 1966–

Admiral Hillenkoetter took office on September 26, 1947, under a recess appointment. He was nominated by the President on November 24 and confirmed by the Senate on December 8, 1947. Admiral Hillenkoetter also had been appointed Director of Central Intelligence, and had served in that capacity from May 1, 1947, to September 26, 1947, under the authority of the President's Directive of January 22, 1946, which had established that Office as well as the National Intelligence Authority and the Central Intelligence Group. See the text of that Directive at Footnote 22. Mr. Dulles also served as Acting Director from February 9 to February 26 in 1953.

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[14] The following men have been appointed Deputy Director of Central Intelligence under the authority of section 102(a) of the Act, as amended, and served in that capacity for the periods indicated:

Lieutenant General (later General) Charles Pearre Cabell, USAF
April 23, 1953–January 31, 1962

Lieutenant General Marshall Sylvester Carter, USA
April 3, 1962–April 28, 1965

Richard Helms
April 28, 1965–June 30, 1966

Vice Admiral Rufus Lackland Taylor, USN
October 13, 1966–January 31, 1969

Lieutenant General Robert Everton Cushman, Jr., USMC
May 7, 1969–

(Footnote 14—Continued)
Also appointed and serving as Deputy Director under the Act during the period when that office was not a position established by statute (September 18, 1947, to April 4, 1953) were:

Brigadier General Edwin Kennedy Wright, USA
September 26, 1947–March 9, 1949
William Harding Jackson
October 7, 1950–August 3, 1951
Allen Welsh Dulles
August 23, 1951–February 26, 1953.

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[15] The 1947 Act, which did not include the current language establishing the position of Deputy Director (see Footnote 12), did include the language that the Director could be appointed "from among the commissioned officers of the armed services or from among individuals in civilian life." The proviso in section 102(a) was added by the House Committee on Armed Services to the legislation which in 1953 amended the 1947 Act (P.L. 83–15, Footnote 12). The Committee, "in its amendment to the bill, precludes the possibility of military officers simultaneously occupying the positions of Director and Deputy Director. The committee feels that at all times either the Director or the Deputy Director should be a civilian and that at no time should it be possible for both offices to be occupied by military personnel" (H.R. Rep. No. 83-219, March 30, 1953). Congressman Short supported the principle, noting that "it carries out the traditional concept of civilian control in all phases of our military structure" (Congressional Record, April 1, 1953, p. 2646). But it was desirable, the Congressman stated, to permit the appointment of a commissioned officer as Director or Deputy Director.

> It is felt that this Agency working so closely with the Armed Forces, should have one military man in a high position in the Agency. The collection and dissemination of information dealing with our national security must of necessity involve the Armed Forces (Congresssional Record, April 1, 1953, p. 2645).

As noted in Footnote 12, the 1953 amendment concerning the Deputy Director was accomplished by language which caused other provisions of subsections 102(a) and (b) to apply with respect to the office of Deputy Director, as well as that of Director. Thus, the authority to appoint "from among the commissioned officers of the armed services or from among individuals in civilian life," applies with respect to either office.

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[16] The 1947 Act set the pay of the Director at $14,000 per year and, if he was a commissioned officer of the Armed Forces, he was to be paid from Agency funds "compensation at a rate equal to the amount by which $14,000 exceeds the amount of his annual military pay and allowances." The rate of basic compensation of the Director was raised to $16,000 per annum, and that of the Deputy Director of Central Intelligence (which was not then a statutory office) set at $14,000 per annum, by sections 4 and 6 of P.L. 81-359 (63 Stat. 880, October 15, 1949), a statute which established compensation rates for cabinet and other senior positions in the government. Compensation for the

(Footnote 16—Continued)
Deputy Director was increased to $14,800 by administrative action pursuant to section 10 (now section 8) of the CIA Act and P.L. 82-375 (66 Stat. 101, June 5, 1952), with retroactive effect to June 30, 1951. The provision that the amount to be paid by CIA to a commissioned officer of the armed services appointed Director or Deputy Director is "the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances" was added by the amendment of April 4, 1953 (Footnote 12). A 1965 decision of the Comptroller General holds that because of the Dual Compensation Act (78 Stat. 484, P.L. 88-448, August 19, 1964) those provisions of the National Security Act, as amended, "relating to the civilian compensation and retired pay of a retired commissioned officer who may be appointed as Director of the Central Intelligence Agency no longer are in effect" (44 Comp. Gen. 708, May 12, 1965, summarized at page 199 of PART VIII). Under the ruling, the Director, if he is a retired commissioned officer, receives both the compensation of his civilian position and that portion of his retired pay permitted by the Dual Compensation Act, namely, $2,000 "plus one-half of the remainder" of his retired pay. The ruling would apply also with respect to the compensation of the Deputy Director if he is a retired commissioned officer.

Compensation for the Director was raised to $21,000, and that of the Deputy Director to $20,500, by sections 104 and 105 of the Federal Executive Pay Act of 1956 (70 Stat. 736, P.L. 84-854, July 31, 1956). Sections 302 and 303 of the Federal Executive Salary Act of 1964 (78 Stat. 415, P.L. 88-426, August 14, 1964; PART VI, p. 135.1) established the Federal Executive Salary Schedule, placed the office of the Director in Level II and that of the Deputy Director in Level III thereof, and set the annual rates of basic compensation for those Levels at $30,000 and $28,500, respectively. The latter was raised to $29,500 by section 215 of the Federal Salary Act of 1967 (81 Stat. 624, P.L. 90-206, December 16, 1967).

Section 225 of the Federal Salary Act of 1967 established the Commission on Executive, Legislative, and Judicial Salaries to conduct "a review of the rates of pay of" various senior positions in the government, including those in Levels II and III, and to report to the President the results of its review "together with its recommendations." The President, in turn, is required to include "in the budget next submitted by him to the Congress after the date of the submission of the report and recommendations of the Commission . . . his recommendations with respect to the exact rates of pay which he deems advisable" for those positions. The President, on January 15, 1969, recommended for Levels II and III, $42,500 and $40,000, respectively, and Congress took no contrary action. (Further in compliance with section 225, the President's recommendations were published in 34 Fed. Reg. 2241 (February 12, 1969), 3 C.F.R., 1969 Comp., p. 217, and 83 Stat. 863.) The effective date, in the case of the new pay rates of the Director and Deputy Director, thus was March 1, 1969.

Under section 225, Executive Schedule pay rates are to be established by this procedure every four years.

The statute establishing the Executive Schedule is codified at 5 U.S.C.A. 5311-5317. The provisions establishing the Commission and the procedures for setting executive pay rates are codified at 2 U.S.C.A. 351-361.

[17] Subparagraph (3) was first enacted by P.L. 83-15 (Footnote 12). The purpose of the subparagraph was explained by Senator Saltonstall. Because of the requirements of existing law (see 10 U.S.C.A. 3202, 5231, 8202) and limitations imposed by the Committee on Armed Services, there is a rather rigid restriction on the total number of general and flag officers that the military services are allowed to have on active duty. The committee therefore amended the bill to allow the armed service furnishing a Deputy Director of Central Intelligence one additional officer so long as a commissioned officer from that branch of service is serving as Deputy Director (Congressional Record, March 18, 1953, p. 2072).

[18] Section 7501 of Title 5 prohibits the removal or suspension of any individual in the competitive service except "for such cause as will promote the efficiency of the service," and prescribes procedures for removals. Sections 2102 and 2101 of Title 5 define the "competitive service" to include all appointive positions in the executive branch except "positions which are specifically excepted from the competitive service by or under statute." Since CIA employees are appointed under the authority of section 8(a) of the CIA Act, which authorizes expenditures for personal services notwithstanding "any other provisions of law," CIA positions are excluded from the competitive civil service. Enactment of the CIA Act in 1949, subsequent to the enactment of the National Security Act in 1947, thus obsolesced the reference to section 7501.

[19] *Kochan v. Dulles*

The authority of the Director to terminate an employee under this subsection was challenged by a former employee in a suit in 1959 in the United States District Court for the District of Columbia, in which he sought reinstatement and back pay. The Court (Judge Holtzoff) granted the Government's motion for summary judgment, holding that subsection 102(c) "constitutes complete authority for the action taken against the plaintiff" and that the Director had "plenary power to discharge any employee at will." The Court also stated "the Director had a right to discharge this man for any reason, or no reason at all." And the Court noted that although the Director in this case explained why the plaintiff was discharged, "the law does not require him to do so." *Kochan v. Dulles*, Civ. Act. No. 2728-58, May 20, 1959 (unpublished). The ruling was not appealed.

Torpats v. Dulles

In 1961 the Director's authority under this subsection again was judicially challenged by another terminated employee, also in the United States District Court for the District of Columbia, he also seeking to be restored to his former position. Again the Court, without issuing an opinion, granted summary judgment for the defendant. *Torpats v. Dulles*, Civ. Act. No. 1111:61, July 27, 1961. On appeal the United States Court of Appeals for the District of Columbia noted "that the statute vests in the Director of the Central Intelligence Agency a broad discretion to terminate employees in the interest of the United States, but it is to be distinguished from a so-called 'security' discharge such as was involved in *Service v. Dulles*, 354 U.S. 363 (1957),

(Footnote 19—Continued)
and related cases." The Court held "that the Director acted within the authority conferred upon him by Congress and in accordance with his own regulations." Plaintiff's petition for rehearing was denied. *Torpats v. McCone*, 300 F. 2d 914, March 23, 1962, April 11, 1962. The Supreme Court declined to accept an appeal. *Torpats v. McCone*, 371 U.S. 886, November 5, 1962.

Rhodes v. United States

The Director's authority again was tested in a 1962 case, this time in the United States Court of Claims. The terminated employee, after an unsuccessful appeal to the Civil Service Commission, sought damages for an alleged wrongful termination, contending that he was terminated in violation of the Veterans' Preference Act, the regulations of the Civil Service Commission and those of the Central Intelligence Agency. The Court indicated that cross motions for summary judgment presented two questions: (1) whether the Director had discretion to terminate plaintiff's employment with the Agency when the Director deemed such termination either necessary or advisable in the interests of the United States, and (2) whether the Agency violated its own regulations in terminating plaintiff's employment. From the decision of the Court, it also appears the plaintiff was contending that the action of the Commission was arbitrary and capricious. In granting motion for summary judgment for the defendant, the Court held that clearly the statute and implementing regulation "gave the Director of Central Intelligence Agency the absolute right to terminate any employee whenever he deemed it necessary or advisable." Further, "we hold that no regulation of the Central Intelligence Agency was violated when plaintiff's employment was terminated and, consequently, the action of the Civil Service Commission could not be arbitrary, capricious or contrary to law." Plaintiff's motion for reconsideration was denied. *George S. Rhodes v. United States*, 156 Ct. Cl. 31, January 12, 1962, April 4, 1962. The Supreme Court declined to accept an appeal. *Rhodes v. United States*, 371 U.S. 821, October 8, 1962.

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[20] Subsection (d) is the statutory authority for directives by the National Security Council under which CIA collects, evaluates, correlates and disseminates foreign intelligence, and performs additional services of common concern, and other functions and duties related to intelligence affecting the national security.

The Atomic Energy Act of 1954 authorizes the Atomic Energy Commission to protect certain information concerning atomic energy (Restricted Data) and specifically authorizes the Commission to remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director jointly determine "to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information." See extracts from the Atomic Energy Act at page 121 of PART VI. This provision in the Atomic Energy Act is the only statute, other than section 102(d) of the National Security Act, which confers joint authority on the Director of Central Intelligence and another agency to carry out the provisions of section 102(d).

[21] *United States v. Jarvinen*

The authority to exercise the responsibility established by this proviso was at issue in a criminal case in the United States District Court for the Western District, State of Washington, in 1952. One Jarvinen, a Seattle travel agent, had been developed by the CIA office in Seattle as a source of foreign intelligence information. On one occasion he reported to CIA representatives that a Seattle lawyer had booked passage to Moscow and return for Professor Owen Lattimore. The CIA representatives referred Jarvinen to the FBI office in Seattle to whom he also reported the information. Subsequently, Jarvinen advised CIA and FBI representatives that his report was a fabrication. He was indicted for furnishing false information to government agencies (18 U.S.C. 1001). The Agency was concerned with the adverse effect that public identification of the informant by CIA representatives would have on the development and retention of intelligence sources. Accordingly, the Director instructed the CIA officers not to testify on this point, and they of course complied. The CIA General Counsel was permitted to make an appearance at the trial to present the CIA position on this one issue. (Thus, the novel situation wherein a United States Attorney is attempting to compel testimony, and another government legal officer is urging to the contrary.) He argued that the Director had authority under 102(d)(3) to direct the refusal to testify and to assert executive privilege. The Court permitted the prosecution to continue to question the witnesses and, when the CIA representatives continued to refuse to answer, ordered a separate hearing on the question of criminal contempt. In that hearing, the Court again denied the claim of privilege and convicted the two, on October 3, 1952. The Court relied heavily on the fact that the trial was for a *criminal* offense, and felt that all testimony therefore must be heard to insure a fair trial. It was, the Court held, a matter of having all pertinent testimony aired, and not allowing the claim of privilege to be abused. The attorneys involved—the Department of Justice, CIA General Counsel, the local defense counsel and Donovan, Leisure, Newton and Irvine (General William J. Donovan's firm whose services had been offered *pro bono publico*)—independently concluded the fact situation was not a good one on which to appeal. Since the intelligence source was hardly a secret one and since no classified information was involved, an appeal, risking an adverse decision in terms harmful to the exercise of the Director's responsibility to protect sources and methods in the future, was not warranted. Pardon was sought, and granted by President Truman on December 16, 1952. Jarvinen, in the original case, was acquitted. *United States v. Jarvinen*, No. 48547, October 1952 (unpublished).

Heine v. Raus

The reach of this proviso again was at issue in a case filed in 1964 in the United States District Court for Maryland (*Heine v. Raus*, 261 F. Supp. 570, December 8, 1966). The plaintiff contended he was slandered by a Central Intelligence Agency employee who, pursuant to instructions, had warned "members of the Estonian emigre groups that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent." The defendant's motion for summary judgment asserted the defense of absolute privilege on the ground that when he made certain defamatory statements he was acting within the scope and course of his employment by the Central Intelligence Agency on behalf of the United States, and had been instructed by the Central Intelligence Agency to give

(Footnote 21—Continued)
the warning concerning Heine. Additionally, the United States asserted its privilege against disclosing state secrets. Summary judgment was entered for the defendant. The Court concluded that an official who acts under the orders of a superior official, which he has a duty to carry out, is absolutely exempt from liability if the harm done by him is done solely in implicit obedience to an order lawful upon its face. Further, the Court concluded the action complained of was within the outer perimeter of the defendant's line of duty. One "of the functions entrusted to the Central Intelligence Agency and its Director is 'protecting intelligence sources and methods from unauthorized disclosure'" and it "is reasonable that emigre groups from nations behind the Iron Curtain would be a valuable source of intelligence information as to what goes on in their old homeland. . . . The court concludes that activities of the Central Intelligence Agency to protect its foreign intelligence sources located in the United States are within the power granted by Congress to the CIA." Moreover, the "fact that the immediate intelligence source is located in the United States does not make it an 'internal-security' function" within the limiting proviso of clause (3) of subsection 102(d). With respect to the assertion of privilege by the government, the Court held that the proviso of clause (3), together with section 6 of the Central Intelligence Agency Act, as amended, and Executive Order 10501, as amended (which requires the protection of classified information), reinforce the well-established principle that the government has and may assert a privilege against revealing state secrets without thereby causing the facts at issue to be taken as established against the government.

On appeal, the United States Court of Appeals, Fourth Circuit, in an opinion by Chief Judge Haynsworth, affirmed "the right of the Central Intelligence Agency in this case to invoke the governmental privilege against disclosure of state secrets" as enunciated by the District Court. "The Court made sufficient inquiry—some of it *in camera*—to assure that it had not been done lightly, without pressing so far as to reveal the very state secrets the privilege is intended to protect." With respect to the question of executive privilege, the Court of Appeals generally upheld the District Court. "The CIA and its Director are specifically charged with the duty and responsibility of protecting sources of foreign intelligence and methods of collecting such intelligence from unauthorized disclosure. That aliens within this country are sources of foreign intelligence, as claimed by the Director, has been recognized by the Congress. If the Director determines that an alien's entry for permanent residence in the United States is in the interest of national security or essential to the Agency's intelligence mission, the entry of the alien and his family is allowed though they would be otherwise inadmissible." (The Court here is referring to section 7 of the CIA Act.) Noting a difference between the facts in this case and those in a leading Supreme Court decision, the Court said, "action here to protect the integrity of sources of foreign intelligence was explicitly directed by Congress." The Court concluded the absolute privilege is available to Raus "if his instructions were issued with the approval of the Director or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions was sub-

(Footnote 21—Continued)
sequently ratified and approved by such official." The Court of Appeals vacated judgment and remanded to the District Court for appropriate findings on that point. "The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a subordinate official, having authority to do so, authorized, approved, or ratified the instructions. If such disclosures are reasonably thought by the District Judge to violate the claimed privilege for state secrets, they may be made *in camera,* to that extent."

One judge dissented. He agreed with Chief Judge Haynsworth's basis for remand, but he thought the decision for summary judgment was additionally deficient. He would have the scope of Raus' duties be further developed before the District Court and he would not rely on the affidavits submitted for Raus. He further wrote: "The National Security Act specifically delegates to the *Director,* and not to the Agency, the statutory power relied on by the CIA and the district judge to justify the defamatory statements, and the affidavits do not suggest that the Director personally instructed Raus to defame Heine, nor is there any showing that the Director approved the defamation of Heine or properly delegated his responsibility to protect intelligence sources." And finally, he distinguished the *Heine* case from a leading recent Supreme Court decision in which absolute privilege on the part of a government employee who had defamed two subordinate employees was upheld. He thought the immunity conferred by that case "has no application to a fact situation where defamation is chosen by a government agency as deliberate policy." *Heine v. Raus,* 399 F. 2d 785, July 22, 1968.

In the limited inquiry directed by the Fourth Circuit, the District Court found that "the instructions to Raus were given by a subordinate official of the Agency, authorized to do so, and acting in the course of his prescribed duties and not by an unauthorized underling" and that Richard Helms, at that time (December 1964) the Deputy Director of the Agency, "was authorized to and did ratify and approve the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent." (The Court concluded that it was therefore "unnecessary to consider whether the reiterated approval of the instructions by Helms as the present Director would be sufficient.") Summary judgment was entered for the defendant. *Heine v. Raus,* 305 F. Supp. 816, November 3, 1969 (D. Md.). The Fourth Circuit affirmed, holding that "the district court fairly resolved the question of authority and ratification left open by our prior decision, *Heine v. Raus,* 399 F. 2d 785 (4th Cir. 1968). Thereupon he entered summary judgment in accordance with the law of the case." *Heine v. Raus,* 432 F. 2d 1007, October 30, 1970. The plaintiff petitioned the Supreme Court to review the case, which the Court, on April 19, 1971, declined (Justices Douglas and Stewart dissenting). *Heine v. Raus,* 28 L. Ed. 2d 658 (May 15, 1971).

[22] The Federal Register citation is to the President's Directive of January 22, 1946 (3 C.F.R., 1943-1948 Comp., p. 1080), establishing the National Intelligence Authority and the Central Intelligence Group. That Directive, set out below, has striking similarities with subsection 102(d):

PRESIDENTIAL DIRECTIVE OF
JANUARY 22, 1946

Coordination of Federal Foreign Intelligence Activities

The White House,
Washington, January 22, 1946.

To The Secretary of State, The Secretary of War, and The Secretary of the Navy.

1. It is my desire, and I hereby direct, that all Federal foreign intelligence activities be planned, developed and coordinated so as to assure the most effective accomplishment of the intelligence mission related to the national security. I hereby designate you, together with another person to be named by me as my personal representative, as the National Intelligence Authority to accomplish this purpose.

2. Within the limits of available appropriations, you shall each from time to time assign persons and facilities from your respective Departments, which persons shall collectively form a Central Intelligence Group and shall, under the direction of a Director of Central Intelligence, assist the National Intelligence Authority. The Director of Central Intelligence shall be designated by me, shall be responsible to the National Intelligence Authority, and shall sit as a non-voting member thereof.

3. Subject to the existing law, and to the direction and control of the National Intelligence Authority, the Director of Central Intelligence shall:

a. Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence. In so doing, full use shall be made of the staff and facilities of the intelligence agencies of your Departments.

b. Plan for the coordination of such of the activities of the intelligence agencies of your Departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

c. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

d. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.

(Footnote 22—Continued)

4. No police, law enforcement or internal security functions shall be exercised under this directive.

5. Such intelligence received by the intelligence agencies of your Departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions.

6. The existing intelligence agencies of your Departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.

7. The Director of Central Intelligence shall be advised by an Intelligence Advisory Board consisting of the heads (or their representatives) of the principal military and civilian intelligence agencies of the Government having functions related to national security, as determined by the National Intelligence Authority.

8. Within the scope of existing law and Presidential directives, other departments and agencies of the executive branch of the Federal Government shall furnish such intelligence information relating to the national security as is in their possession, and as the Director of Central Intelligence may from time to time request pursuant to regulations of the National Intelligence Authority.

9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions, except as provided by law and Presidential directives.

10. In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods.

Sincerely yours,

HARRY S TRUMAN

[22A] The Central Intelligence Group was established by the Presidential Directive of January 22, 1946 (Footnote 22). That Directive, it will be noted, did not terminate the Office of Strategic Services. OSS was not in law a predecessor organization of CIG, and thus not of CIA, notwithstanding that its experience and concepts played a major role in the creation of CIA.

The legal existence of OSS was accomplished by a number of Presidential orders. An Order by the President of July 11, 1941,

> established the position of Coordinator of Information, with authority to collect and analyze all information and data, which may bear upon national security; to correlate such information and data, and to make such information and data available to the President and to such departments and officials of the Government as the President may determine; and to carry out, when requested by the President, such supplementary activities as may facilitate the securing of information important for national security not now available to the Government.

(Footnote 22A—Continued)

The Order contained other provisions concerning the authority of the Coordinator and the impact of such duties on the duties and responsibilities "of the regular military and naval advisories of the President as Commander in Chief of the Army and Navy." The Order designated William J. Donovan as Coordinator.

By Executive Order 9182 of June 13, 1942, the Office of War Information was established within the Office of Emergency Management in the Executive Office of the President to which were transferred the powers and duties of a number of other offices. Among those transferred were the "powers and duties of the Coordinator of Information relating to the gathering of public information and its dissemination abroad, including, but not limited to, all powers and duties now assigned to the Foreign Information Service, Outpost, Publications, and Pictorial Branches of the Coordinator of Information." Also on June 13, 1942, a military order signed by Franklin D. Roosevelt in his capacity as *"Commander-in-Chief"* revoked the Order of July 11, 1941, designated the office of Coordinator of Information as the Office of Strategic Services and transferred it to the jurisdiction of the Joint Chiefs of Staff and ordered as follows:

> 2. The Office of Strategic Services shall perform the following duties:
>
> a. Collect and analyze such strategic information as may be required by the United States Joint Chiefs of Staff.
>
> b. Plan and operate such special services as may be directed by the United States Joint Chiefs of Staff.
>
> 3. At the head of the Office of Strategic Services shall be a Director of Strategic Services who shall be appointed by the President and who shall perform his duties under the direction and supervision of the United States Joint Chiefs of Staff.
>
> 4. William J. Donovan is hereby appointed as Director of Strategic Services.

By Executive Order 9312 of March 9, 1943, various duties concerning foreign propaganda activities were assigned to the Office of War Information, the War and Navy Departments, the Joint Chiefs of Staff and military theater commanders. "The military order of June 13, 1942, establishing the Office of Strategic Services, is hereby modified to the extent necessary to make this order effective."

The Office of Strategic Services was terminated as of October 1, 1945, by Executive Order 9621 of September 20, 1945, and certain of its functions transferred to the Department of State and the Secretary of State, and all other functions of OSS transferred to the Department of War and the Secretary of War. "The Secretary of War shall, whenever he deems it compatible with the national interest, discontinue any activity transferred by this paragraph and wind up all affairs relating thereto." By memoranda of 26 and 27 September 1945, Assistant Secretary of War John J. McCloy and Secretary of War Robert B. Peterson created the Strategic Services Unit, with Brigadier General John Magruder as its head, to "exercise, administer and operate (with power of delegation and successive redelegation where appropriate) the functions, personnel, records and property which have been or will be transferred to the War Department and the Secretary of War under"

(Footnote 22A—Continued)
Executive Order 9621. (The several orders mentioned in this Footnote are found in 3 C.F.R., 1938-1943 Comp., at pages 1324, 1169, 1308 and 1259 and 3 C.F.R., 1943-1948 Comp., at page 431, respectively.)

[23] As indicated at Footnote 13, the first Director appointed under subsection 102(a) took office as of September 26, 1947. Thus, the National Intelligence Authority and the Central Intelligence Group ceased to exist as of that date and personnel, property, records and funds thereupon transferred to CIA. CIA was established as of September 18, 1947. See Footnote 32.

[24] Notwithstanding that the text of this section of the Code continues to list the Secretary of Defense, section 303(a) of the National Security Act was repealed, as to the Secretary of Defense, by section 53 of P.L. 84-1028 (70A Stat. 641, August 10, 1956). But that statute confers similar authority on the Secretary (10 U.S.C.A. 173).

[25] Section 303(a) of the 1947 Act listed "the Chairman of the National Security Resources Board." An amendment of 1954 substituted for that language the "Director of the Office of Defense Mobilization" (68 Stat. 1226, P.L. 83-779, September 3, 1954). A series of reorganization plans and statutes, as set out at Footnote 6, abolished the National Security Resources Board and transferred its functions to the Office of Emergency Preparedness.

[26] The "National Security Council, acting through its Executive Secretary" was added by the National Security Act Amendments of 1949 (Footnote 4).

[27] The subsections of Title 5, as listed above, have been renumbered by the 1966 codification of Title 5. See the Table of former and new sections of Title 5 at pp. XXI, XXII, XXIV and XXVII of 5 U.S.C.A. (1967).

[28] The listed subsections of "this title" are sections 2, 101, 102, 103, and 303 of the National Security Act.

[29] The Civil Service Commission by regulation, requires government employees, including "special government employees," to submit to their employing agency or department statements of employment and financial interests. A "special government employee" is defined as an officer or employee of the executive branch of the government "who is retained, designated, appointed or employed to perform with or without compensation, but not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis." At the request of CIA, the Commission in April 1969 amended its regulation to exclude from that reporting requirement any "special government employee" who is a "specialist appointed for intermittent confidential intelligence consultation of brief duration" (5 C.F.R. 735.412).

[30] The 1947 Act authorized compensation "not to exceed $35." The amount was increased to "$50" by section 10 of the National Security Act Amendments of 1949 (Footnote 4).

[31] In the 1947 Act, the reference was to "section 109 or 113 of the Criminal Code (U.S.C., 1940 edition, title 18, secs. 198 and 203), or section 19(e) of the Contract Settlement Act of 1944." That language was replaced by the current language by section 8 of P.L. 83-779 (Footnote 25).

Section 2 of P.L. 87-849 repealed sections 281 and 283 (except as they may apply to retired officers of the Armed Forces of the United States) and section 284 and "supplanted" them with sections 203, 205 and 207 (76 Stat. 1119, October 23, 1962). Section 203 of Title 18 prohibits graft. Sections 205 and 207 prohibit activities by government employees and former employees inconsistent with their government employment duties.

[32] The National Security Act was enacted July 26, 1947. James V. Forrestal took office as the first Secretary of Defense on September 17, 1947. The effective date of those provisions of the National Security Act of 1947 set forth in the *Guide* (other than section 310) therefore was September 18, 1947, and the Central Intelligence Agency was established as of that date.

The National Military Establishment, the Office of Secretary of Defense and the Department of the Air Force also were established by the National Security Act, and the War Department was redesignated the "Department of the Army." By the operation of section 310 these actions also were effective September 18, 1947. The National Military Establishment was redesignated the "Department of Defense," effective August 10, 1949, by the National Security Act Amendments of 1949 (Footnote 4).

PART II

CENTRAL INTELLIGENCE AGENCY ACT OF 1949, as amended

CONTENTS—Central Intelligence Agency Act of 1949, as amended

[1] The Act does not include a name for sections 6 and 7. The names used in this table of contents are descriptive of the contents of those sections.

September 1970

CENTRAL INTELLIGENCE AGENCY ACT OF 1949, as amended

(63 Stat. 208, P.L. 81-110, June 20, 1949;[1]
64 Stat. 450, P.L. 81-697, August 16, 1950;
65 Stat. 89, P.L. 82-53, June 26, 1951;
68 Stat. 1105, P.L. 83-763, September 1, 1954;
72 Stat. 327, P.L. 85-507, July 7, 1958;
74 Stat. 792, P.L. 86-707, September 6, 1960;
78 Stat. 484, P.L. 88-448, August 19, 1964)

AN ACT

To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. When used in sections 403b-403j of this title,[2] the term—

(a) "Agency" means the Central Intelligence Agency;

(b) "Director" means the Director of Central Intelligence;

(c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.[3] 50 U.S.C.A. 403a.

SEAL OF OFFICE

SEC. 2. The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve,[4] and judicial notice shall be taken thereof. 50 U.S.C.A. 403b.

PROCUREMENT AUTHORITIES

SEC. 3. (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections [2(c)(1), (2), (3), (4), (5), (6), (10), (12), (15), (17),[5] and sections 3, 4, 5, 6, and 10[6] of the Armed Services 50 U.S.C.A. 403c.

Procurement Act of 1947 (Public Law 413, Eightieth Congress, second session)].[7]

(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.[8]

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (d) of this section, the Agency head is authorized to delegate his powers provided in this section, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the Agency.[9]

(d) The power of the Agency head to make the determinations or decisions specified in [paragraphs (12) and (15) of section 2 (c) and section 5 (a) of the Armed Services Procurement Act of 1947][10] shall not be delegable. Each determination or decision required by [paragraphs (12) and (15) of section 2 (c), by section 4 or by section 5 (a) of the Armed Services Procurement Act of 1947],[11] shall be based upon written findings made by the official making such determinations, which findings shall be final and shall be available within the Agency for a period of at least six years following the date of the determination.

TRAVEL, ALLOWANCES, AND RELATED EXPENSES

50 U.S.C.A. 403e.

SEC. 4.[12] Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations[13] outside the several states of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia,[14] shall—

(1) (A) pay the travel[15] expenses of officers and employees of the Agency, including expenses incurred while traveling pursuant to authorized[16] home leave;

(B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of sections 403a-403j[17] of this title or any other Act;

(C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his

residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

(D) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects [18] of an officer or employee of the Agency, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,[19] when not otherwise fixed by law;[20]

(E) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,[21] when not otherwise fixed by law;[22]

(F) pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the ap-

propriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3) (A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each officer or employee of the Agency who was a resident of the United States (as described above) at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter.[23]

(B) While in the United States (as described in paragraph (3) (A) of this section) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.[24]

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3) (A) of this section), leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the United States (as so described) and such time as may be necessarily occupied in awaiting transportation.[25]

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned motor vehicle in any case in which it shall be determined that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination and pay the costs of such transportation. Not more than one motor vehicle of any officer or employee of the Agency may be transported under authority of this paragraph during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Director and upon a determination, in advance, by the Director that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee

who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.[26]

(5) (A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means he shall deem appropriate and without regard to the Standardized Government Travel Regulations and section 73b [now section 5731 (a)] of Title 5,[27] to the nearest locality where a suitable hospital or clinic exists and on his recovery pay for the travel expenses of his return to his post of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant;

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in his opinion, sufficient personnel is employed to warrant such a station: *Provided,* That, in his opinion, it is not feasible to utilize an existing facility;

(C) In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

(6) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time

of appointment to places of employment and return to their actual residences at the time of appointment or a point not more distant: *Provided,* That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of such agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.[28]

GENERAL AUTHORITIES

SEC. 5. In the performance of its functions, the Central Intelligence Agency is authorized to [29]—

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget,[30] for the performance of any of the functions or activities authorized under sections 403 and 405 of this title,[31] and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a-403j of this title [32] without regard to limitations of appropriations from which transferred; 50 U.S.C.A 403f.

(b) Exchange funds without regard to section 543 of Title 31;[33]

(c) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;

(d) Authorize couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security;

(e) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor without regard to limitations on expenditures contained in the Act of June 30, 1932, as amended;[34] *Provided,* That in each case the Director shall certify that exception from such limitations is necessary to the successful

performance of the Agency's functions or to the security of its activities.[35]

50 U.S.C.A. 403g.

SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title[36] that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5,[37] and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided,* That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.[38]

50 U.S.C.A. 403h.

SEC. 7. Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations,[39] or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided,* That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.[40]

APPROPRIATIONS

50 U.S.C.A. 403j.

SEC. 8. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions,[41] including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service programs as authorized by section 150 [now section 7901] of Title 5;[42] rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-send-

ing equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 14 of Title 6;[43] payment of claims pursuant to Title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to sections 259 and 267 of Title 40;[44] repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.[45]

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds;[46] and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director[47] and every such certificate shall be deemed a sufficient voucher for the amount therein certified.[48]

SEPARABILITY OF PROVISIONS

SEC. 9.[49] If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the

remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SHORT TITLE

SEC. 10. This Act may be cited as the "Central Intelligence Agency Act of 1949."

Approved June 20, 1949.

[1] Legislative history materials include:
H.R. Rep. No. 160, 81st Cong., 1st Sess., February 24, 1949; and
Sen. Rep. No. 106, 81st Cong., 1st Sess., March 10, 1949.

[2] These sections of Title 50 are the Central Intelligence Agency Act.

[3] The 1949 Act also included a section 1(d): "'Continental United States' means the States and the District of Columbia." It was repealed by section 511(a) of the Overseas Differentials and Allowances Act (74 Stat. 792, P.L. 86-707, September 6, 1960). This repeal of the definition of "Continental United States" was accompanied by an amendment to the section which now is section 4 concerning the geographical application of that section. See Footnote 14. For a statement of the general background and purpose of the Overseas Differentials and Allowances Act see Footnote 13.

[4] The Director has caused a seal of office to be made for the Central Intelligence Agency and President Truman approved it by his issuance of Executive Order 10111 (3 C.F.R., 1949-1953 Comp., p. 302, February 17, 1950):

Executive Order 10111
ESTABLISHING A SEAL FOR THE CENTRAL INTELLIGENCE AGENCY

WHEREAS section 2 of the Central Intelligence Agency Act of 1949, approved June 20, 1949 (Public Law 110–81st Congress), provides, in part, that the Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency of such design as the President shall approve; and

WHEREAS the Director of Central Intelligence has caused to be made and has recommended that I approve a seal of office for the Central Intelligence Agency the design of which accompanies and is hereby made a part of this order, and which is described in heraldic terms as follows:

SHIELD: Argent, a compass rose of sixteen points gules.

CREST: On a wreath argent and gules an American bald eagle's head erased proper.

Below the shield on a gold color scroll the inscription "United States of America" in red letters, and encircling the shield and crest at the top the inscription "Central Intelligence Agency" in white letters.

All on a circular blue background with a narrow gold edge;

AND WHEREAS it appears that such seal is of suitable design and is appropriate for establishment as the official seal of the Central Intelligence Agency;

(Footnote 4—Continued)

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the said section 2 of the Central Intelligence Agency Act of 1949, I hereby approve such seal as the official seal of the Central Intelligence Agency.

Harry S. Truman

The White House,
February 17 1950.

A facsimile of the seal appears below the President's signature on the Executive Order, and is reproduced on the binder and the title page of this manual.

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[5] These subsections of the Armed Services Procurement Act of 1947 (62 Stat. 21, P.L. 80-413, February 19, 1948, 10 U.S.C.A. 2301 et seq.), thus are authority for the Agency to negotiate purchases and contracts for supplies and services, without advertising, if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $1,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(10) for supplies or services for which it is impracticable to secure competition;

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;

(17) otherwise authorized by law.

(Footnote 5—Continued)

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377, P.L. 81-152, June 30, 1949, 40 U.S.C.A. 471 et seq.) in essence re-enacted the Armed Services Procurement Act to apply to the government generally. It also provides that nothing therein "shall impair or affect any authority of . . . the Central Intelligence Agency" (40 U.S.C.A. 474(17); see also page 112 of PART VI). Thus, procurement authority available to CIA includes the listed sections of the Armed Services Procurement Act, as well as the Federal Property and Administrative Services Act. Further, any amendments to the latter would be applicable with respect to CIA procurement. Since section 3(a) of the CIA Act adopts the listed provisions of the Armed Services Procurement Act in existence at the time of the enactment of the CIA Act, any subsequent amendment of any of those provisions would not be applicable automatically to CIA.

A 1965 amendment to the Federal Property and Administrative Services Act concerns automatic data processing equipment. See excerpts from that amendment and accompanying narrative at page 111 of PART VI, as to its application to national security and to CIA interests.

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[6] These sections of the Armed Services Procurement Act (the Act is cited at Footnote 5) prescribe rules with respect to advertising for bids, types of contracts which may be negotiated, advance payments, liquidated damages and procurement for other agencies and joint procurement. Authorities similar to all of these, except procurement for other agencies and joint procurement, also are provided for the government generally by the Federal Property and Administrative Services Act (Footnote 5).

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[7] The bracketed language is from section 3 as enacted in the CIA Act of 1949, rather than from section 3 as it has been codified at 50 U.S.C.A. 403c. As indicated in the PREFACE, this is the only instance in the *Guide* in which a statute is set out in the language of the original act, rather than the language by which the act now is codified in the United States Code, This is necessary because of the following factor. As indicated in Footnote 5, only the listed Armed Services Procurement Act sections in force at the time of the enactment of the CIA Act, and not any subsequent amendments to those sections, are authorities available to CIA. Since some of the sections listed in 50 U.S.A. 403c. are amended sections of the Armed Services Procurement Act of 1947, a listing of those sections would be a listing of some procurement authorities which had not been made applicable to CIA.

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[8] At the time of the enactment of the CIA Act the Executive was the principal staff officer of the Agency charged with overall coordination of Agency activities. By a reorganization of December 1, 1950, the Deputy Director for Administration was designated the Executive, for the purpose of exercising those Agency powers specifically delegated by law to the Executive. The office of the Deputy Director (Administration) was replaced by the office of the Deputy Director (Support), and the functions of the former transferred, effective February 3, 1955. The title was changed to Deputy Director for Support in August 1963.

[9] Sections 3(c) and (d) are nearly identical with corresponding provisions of the Armed Services Procurement Act and the Federal Property and Administrative Services Act (Footnote 5).

[10] Paragraphs (12) and (15) of section 2(c) of the Armed Services Procurement Act of 1947 are set out at items (12) and (15) in Footnote 5. Section 5(a) of that Act authorizes agency heads to make advance payments under negotiated contracts under certain circumstances and provided the agency head "determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract."

The language keyed to this Footnote is in brackets for the reason set forth at Footnote 7.

[11] Footnote 10 is applicable also with respect to all the language keyed to this Footnote, except the reference to "section 4" of the Armed Services Procurement Act. The determinations and decisions required by section 4 of that Act are: (a) that contracts negotiated pursuant to section 2(c) are to contain a suitable warranty by the contractor "as determined by the agency head" that no person or selling agency was employed or retained by the contractor to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee, except "bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business"; and (b) that in the case of a cost-plus-a-fixed-fee contract, a fee in excess of 10 per centum may not be allowed except upon certain determinations by the agency head. Also, the per centum is to be based on the "estimated cost of the contract" as determined by the agency head at the time of entering into such contract. Additionally, neither a cost, nor a cost-plus-a-fixed-fee contract, nor an incentive type contract may be used "unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure supplies or services of the kind or quality required without the use of" a contract of one of those types.

[12] Section 4, as enacted in 1949, provided:

EDUCATION AND TRAINING

SEC. 4. (a) Any officer or employee of the Agency may be assigned or detailed for special instruction, research, or training, at or with domestic or foreign public or private institutions; trade, labor, agricultural, or scientific associations; courses or training programs under the National Military Establishment; or commercial firms.

(b) The Agency shall, under such regulations as the Director may prescribe, pay the tuition and other expenses of officers and employees of the Agency assigned or detailed in accordance with provisions of subsection (a) of this section, in addition to the pay and allowances to which such officers and employees may be otherwise entitled.

(Footnote 12—Continued)

Section 4 was repealed, and sections 5, 6, 7, 8, 10, 11 and 12 were redesignated as sections 4, 5, 6, 7, 8, 9 and 10, respectively, by section 21 of the Government Employees Training Act (72 Stat. 327, P.L. 85-507, July 7, 1958). As to the original section 9, see Footnote 49. (See, at page 169 of PART VII, Executive Order 10805 exempting CIA from certain provisions of the Government Employees Training Act.)

[13] As enacted in the 1949 Act, this provision read "permanent-duty stations." The word "permanent" was deleted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3).

The current section 4 of the CIA Act was patterned on the travel and benefits provisions of the Foreign Service Act of 1946 (60 Stat. 999, P.L. 79-724, August 13, 1946, 22 U.S.C.A. 80... et seq.). With later amendments to the Foreign Service Act, section 4 had become somewhat out of date. Additionally, provisions for overseas travel and allowances for government generally were not adequate for the increasing numbers of personnel from various government agencies going abroad. Therefore, in early 1955, the House Post Office and Civil Service Committee instituted a complete revamping of the law in this area for government generally. Recognizing the wisdom of having uniform travel and allowances for government employees assigned abroad, the Committee entertained a request both from the Department of State for the Foreign Service and from CIA to consider a uniform overseas travel and allowances act for government generally, including the Foreign Service and CIA. The resulting Overseas Differentials and Allowances Act in 1960, amending the Foreign Service Act and sections 1 and 4 of the CIA Act, as amended, and other laws, thus originated in the House Post Office and Civil Service Committee, rather than in the House Foreign Affairs and Armed Services Committees.

[14] As enacted in the 1949 Act, this provision read "outside the continental United States, its territories, and possessions." The current language was enacted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3). This amendment was accompanied by the repeal of section 1(d), which defined "Continental United States." See Footnote 3.

[15] Attachment A of Bureau of the Budget Circular No. A-56 prescribes regulations governing travel and transportation expenses of government employees generally. By its terms it does not apply to "officers and employees transferred in accordance with the provisions of the Central Intelligence Agency Act of 1949, as amended." Since section 4 of the CIA Act provides authority to pay travel and transportation expenses of CIA personnel assigned to duty stations outside the 48 states and the District of Columbia, travel and transportation expenses for such persons may be paid under the authority of section 4, and Circular A-56 need not be utilized.

[16] As enacted in the 1949 Act, this provision read "orders issued by the Director in accordance with the provisions of section 5(a)(3) with regard to the granting of" home leave. The quoted language was deleted by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

[17] These sections of Title 50 are the Central Intelligence Agency Act.

[18] The term "furniture and household and personal effects," as used in paragraphs (1)(D) and (E) (but not in (1)(C) or (F)) is defined by section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) to mean "such personal property of an employee and the dependents of such employee as . . . the Director of Central Intelligence . . . shall by regulation authorize to be transported or stored under the amendments made by" that Act to paragraph (1)(D) and (E) "(including in emergencies, motor vehicles authorized to be shipped at Government expense)."

[19] Section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) provides that motor vehicles authorized, in emergencies, to be shipped at Government expense are "excluded from the weight and volume limitations prescribed by" paragraphs (1)(D) and (E) of section 4.

[20] Paragraph (1)(D), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

[21] See Footnote 19.

[22] Paragraph (1)(E), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency on first arrival at a post for a period not in excess of three months after such first arrival at such post or until the establishment of residence quarters, whichever shall be shorter." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

[23] Paragraph (3)(A), as enacted in the 1949 Act, read: "Order to the United States or its Territories and possessions on leave provided for in 5 U.S.C. 30, 30a, 30b, or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States or its Territories and possessions at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter: *Provided*, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

[24] Paragraph (3)(B), as enacted in the 1949 Act, read: "While in the continental United States on leave, the service of any officer or employee shall not be available for work or duties except in the agency or for training

(Footnote 24—Continued)

or for reorientation for work; and the time of such work or duty shall not be counted as leave." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

[25] By an amendment enacted in section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3), the words "(as described in paragraph (3)(A) of this section)" and "(as so described)" replace, in each instance, the words "or its Territories and possessions" as enacted in paragraph (3)(C) of the 1949 Act.

[26] In the 1949 Act the word "automobile" appeared in two places in paragraph (C)(4). That word was replaced by the words "motor vehicle", the final two sentences of the paragraph were added, and minor editorial changes were made by an amendment enacted in section 323(b) of the Overseas Differentials and Allowances Act (Footnote 3).

[27] Section 5731(a) limits transportation expenditure to the rate of the lowest first class rate by the transportation facility used unless lowest first class accommodations are not available, or approval for use of a compartment or other accommodation "is required for security purposes."

[28] Section 5 of the 1949 Act consisted of subsections (a) and (b). By the 1958 repeal of section 4 and consequent renumbering, section 5 became section 4. See Footnote 12. Subsection (b) of the renumbered section 4, which together with subsection designation "(a)", were repealed by section 511(a) of the Overseas Differentials and Allowances Act (Footnote 3), provided:

> (b) In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U.S.C. 70), the Director is authorized to grant to any officer or employee of the Agency allowances in accordance with the provisions of section 901(1) and 901(2) of the Foreign Service Act of 1946.

With the repeal of section 4(b), the executive order (Executive Order 10100 (3 C.F.R., 1949-1953 Comp., p. 295, January 28, 1950)) which implemented the section no longer has legal effect.

Under an amendment to section 912 of the Internal Revenue Code of 1954, enacted by section 523(a) of the Overseas Differentials and Allowances Act, "amounts received as allowances or otherwise" under section 4 of the CIA Act of 1949 "shall not be included in gross income and shall be exempt from" income taxation It would appear that any per diem allowances in lieu of expenses paid under section 4 are exempt from income taxation by current Internal Revenue Regulations and Rulings and that the above amendment to the Internal Revenue Code is not necessary to such exemption. In view of the repeal of that portion of the renumbered section 4 which authorized the payment of certain allowances, namely subsection (b) (see above in this Footnote), it would appear that the only allowances exempted by the amendment to the Internal Revenue Code are per diem allowances.

[29] See at Footnote 46 a summary of a case in which a United States District Court dismissed a suit by a former Agency employee challenging the constitutionality of section 5 and section 8(b) of the CIA Act.

[30] Funds transferred under this authority and pursuant to a specific intragovernment agreement thereby are obligated for use in furtherance of the specific project.

[31] These sections of Title 50 are sections 102 and 303 of the National Security Act.

[32] These sections of Title 50 are the Central Intelligence Agency Act.

[33] Section 543 prohibits the exchange of funds by disbursing officers for other than gold, silver or United States notes. Section 5(b) of the CIA Act thus permits Agency disbursing officers to procure foreign funds by exchange or purchase.

[34] The cited portion of the amended 1932 act (40 U.S.C.A. 278a) limits expenditures for the rental of premises, or for altering, improving or repairing rental premises, not to exceed 15 per centum of the fair market value of the premises or 25 per centum of the amount of the rent for the first year, respectively.

[35] The 1949 Act was amended by P.L. 82-53 (65 Stat. 89, June 26, 1951) to add a subsection (f) to what is now section 5, as follows:

> (f)(1) Notwithstanding section 2 of the Act of July 31, 1894 (28 Stat. 205), as amended (5 U.S.C.A. 62), or any other law prohibiting the employment of any retired commissioned or warrant officer of the armed services, the Agency is hereby authorized to employ and to pay the compensation of not more than fifteen retired officers or warrant officers of the armed services while performing service for the Agency, but while so serving such retired officer or warrant officer will be entitled to receive only the compensation of his position with the Agency, or his retired pay, whichever he may elect.
>
> (2) Nothing in this section shall limit or affect the appointment of and payment of compensation to retired officers or warrant officers not presently or hereafter prohibited by law.

Subsection (f) was repealed by section 402(a) of the Dual Compensation Act (78 Stat. 484, P.L. 88-448, August 19, 1964).

[36] This section of Title 50 is section 102(d)(3) of the National Security Act of 1947.

[37] Section 654 required the Civil Service Commission to publish annually a list of all persons "occupying administrative and supervisory positions" in the government. The list was to include also the official title and compensation of each person listed. Section 654 has been repealed by P.L. 86-626 (74 Stat. 425, July 12, 1960).

[38] Section 947(b) directed the Bureau of the Budget to determine quarterly the number of full-time employees required by each department and agency "for the proper and efficient performances of the authorized functions of" the department or agency and provided that excess personnel were to be released. Such determinations by the Director of the Bureau of the Budget and the numbers of employees paid in violation of his orders were to be reported to Congress quarterly by the Director of the Bureau of the Budget. Section 947(b) has been repealed by section 301 of P.L. 81-784 (64 Stat. 832, September 12, 1950).

[39] The laws concerning admissibility are sections 211 et seq. of the Immigration and Nationality Act of 1952 (66 Stat. 163, P.L. 82-414, June 27, 1952), as amended, now codified at Title 8, Chapter 12, Subchapter II, Part II of the United States Code. The regulations concerning admissibility are those issued by the Attorney General and published at Title 8, Chapter 1, Subchapter B of the Code of Federal Regulations.

[40] A United States Court of Appeals has cited this section as indicating that Congress has recognized that "aliens within this country are sources of foreign intelligence" (*Heine v. Raus,* 399 F. 2d. 785, July 22, 1968). See Footnote 21, PART I.

[41] Section 8 is the permanent law which authorizes expenditures by CIA. Because the phrase "for purposes necessary to carry out its functions, including," is an inclusive concept, that language authorizes expenditures for purposes additional to those named in paragraphs (1) and (2) of subsection 8(a).

Among other purposes for which expenditures are authorized by section 8(a), that section is the authority for the employment and compensation of personnel. See in this connection the excerpt from the Classification Act of 1949 at page 114 of PART VI. A Comptroller General decision (31 Comp. Gen. 191, November 21, 1951, summarized at page 190 of PART VIII) has held that retroactive salary "increases by the Central Intelligence Agency are not 'necessary to carry out its functions' within the meaning of the said section 10 [now section 8] and therefore, would be subject to legal objection." But see a later decision upholding retroactive pay increases under circumstances which had not existed at the time of the 1951 opinion (44 Comp. Gen. 89, August 20, 1964) at page 198 of PART VIII.

The language of section 8(a)(1) was patterned, in part, on statutes making appropriations for the Office of Strategic Services.

[42] Section 7901 provides in part:

> (a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

[43] Section 14 of Title 6 authorizes the purchase, under certain circumstances and subject to certain requirements, of surety bonds covering civilian officers and employees and military personnel "who are required by law or administrative ruling to be bonded."

[44] Section 259 prohibited contracts and payments for public buildings sites in excess of specific appropriations. Section 267 provided expenditure for public buildings until after the General Services Administration had prepared and the head of the agency which was to occupy the building had approved sketch plans and cost estimates. Sections 259 and 267 were repealed, subject to a savings clause applicable to certain projects specified by the repealing legislation, by section 17 of P.L. 86-249 (73 Stat. 479, September 9, 1959).

[45] Utilization of this authority enables the Agency to keep abreast of new legislation concerning travel and other fringe benefits which are deemed appropriate to apply to Agency employees.

[46] *Richardson v. Sokol*

This part of section 8(b), and section 5, were challenged in a law suit brought in 1968 by a former Agency employee in the United States District Court for the Western District of Pennsylvania against the Commissioner of the Bureau of Accounts, Treasury Department. The plaintiff sought a declaratory judgment that sections 5 and 8(b) were repugnant to Article I, Section 9, Clause 7, of the United States Constitution. Clause 7 provides that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Plaintiff in effect contended that the named sections of the CIA Act operate to prevent the Commissioner from complying with Clause 7. The Court granted defendant's motion to dismiss. The Court quoted a leading Supreme Court decision that courts have no power *per se* to review and annul acts of Congress on the grounds that they are unconstitutional. That question, the Supreme Court said, may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Further, the Supreme Court held, the plaintiff must show not only that the statute is invalid, but also that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of the enforcement of the statute, and not merely that he suffers in some indefinite way in common with people generally. In the 1968 case involving the CIA Act, the District Court held that the plaintiff asserted no special injury to himself resulting from the defendant's alleged failure to publish the required report. He did allege in oral argument "that his purported injury is based solely on his contention that defendant's compliance with the Act prevents plaintiff from gathering evidence in support of his proposition that there is a direct correlation between international discord and the amounts expended by the United States with reference to foreign affairs." The Court found such "injury insufficient to establish plaintiff's standing to raise a justiciable controversy" and dismissed the complaint. *Richardson v. Sokol,* 285 F. Supp. 866, May 8, 1968.

On appeal, the United States Court of Appeals, Third Circuit, affirmed, but on different grounds. The Court noted that under the relevant statute, district courts have original jurisdiction of civil actions only "wherein the matter in controversy exceeds the sum or value of $10,000." Nowhere did the appellant allege that that amount was in controversy. Further, stated

(Footnote 46—Continued)

the Court, we cannot reasonably say that the complaint otherwise indicates "that the matter in controversy exceeds the value of $10,000 . . . We conclude that the requisite jurisdictional amount does not appear affirmatively on the face of the complaint as it must in order for the district court to have jurisdiction." *Richardson v. Sokol,* 409 F. 2d. 3, April 9, 1969. The Supreme Court declined to accept an appeal. *Richardson v. Sokol,* 396 U.S. 949, November 24, 1969.

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[47] In consequence of a directive by President Kennedy this authority to certify the expenditure of funds, and all other authorities which the Director is empowered to delegate, have been delegated to the Deputy Director. President Kennedy wrote the Director on January 16, 1962:

> As head of the Central Intelligence Agency, while you will continue to have over-all responsibility for the Agency, I shall expect you to delegate to your principal deputy, as you may deem necessary, so much of the direction of the detailed operation of the Agency as may be required to permit you to carry out your primary task as Director of Central Intelligence. . . .

In consequence of this directive and in accordance with legal opinions by the Comptroller General of the United States (41 Comp. Gen. 429, January 2, 1962, set out at page 195 of PART VIII), the Department of Justice, and the General Counsel of CIA, Director John A. McCone on April 2, 1962, delegated to the Deputy Director

> all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, including, but not limited to, the certification authority set forth in section 8(b) of the Central Intelligence Agency Act of 1949, as amended, except for any authorities the delegation of which is prohibited by law.

This delegation has been continued by succeeding Directors and is set forth in an Agency regulation.

The Director's action of April 1962 delegated, in addition to the authorities normal to the conduct of a government agency and the authority to certify the expenditure of confidential funds under section 8, the administrative authorities in sections 4, 5 and 8 of the CIA Act, the authority in section 7 of the Act concerning the entry of aliens, and the authority, in section 2 of the Foreign Espionage Agents Registration Act (70 Stat. 899, P.L. 84-893, August 1, 1956, 50 U.S.C.A. 851, extracted at page 134 of PART VI), to exempt from registration persons who have been instructed or assigned in the espionage, counterespionage, or sabotage service or tactics of a foreign country or political party. Additionally the Deputy Director is authorized to exercise the authority in section 142(e) of the Atomic Energy Act of 1954 (68 Stat. 919, P.L. 83-703, August 30, 1954, 42 U.S.C.A. 2162(e), extracted at page 121 of PART VI) to make joint determinations with the Atomic Energy Commission for the removal from the Restricted Data category of information concerning the atomic energy program of other nations. The authority of the Director under section 102(c) of the National Security Act of 1947 to terminate employment of CIA personnel has been exercised only by the Director.

[48] Funds to be accounted for solely on the basis of such certificates are known as "unvouchered" or "confidential" funds. Statutory authority for the use of such funds has a long history in this country. The secret journals of the Continental Congress record numerous appropriations for military expenditures where the provisions for accounting were left to someone's absolute discretion or were omitted entirely. The current law authorizing their use by the President and the Secretary of State "for the purpose of intercourse or treaty with foreign nations" (31 U.S.C.A. 107) derives from a statute of 1793. For other examples in existing law of authority for the use of confidential funds see 10 U.S.C.A. 7202 (Secretary of Navy), 42 U.S.C.A. 2017(b) (Atomic Energy Commission) and 28 U.S.C.A. 537 (Federal Bureau of Investigation). See also the classified *Historical Study of the Use of Confidential Funds* (1953) compiled by the Office of General Counsel, CIA.

Because these funds are "to be accounted for solely on the certificate of the Director," any audit of expenditures of those funds by the Comptroller General of the United States would be limited to determining that such certifications had been made. In practice the Comptroller General does not conduct such audits; certifications made pursuant to section 8(b) nevertheless are retained as permanent Agency records.

Section 66a of Title 31 of the Code, enacted in 1950, provides that the "head of each executive agency shall establish and maintain systems of accounting and internal control designed to provide . . . adequate financial information needed for the agency's management purposes" and "effective control over and accountability for all funds, property and other assets for which the agency is responsible, including appropriate internal audit." In compliance with section 66a, Agency components conduct comprehensive audits of all such funds, property and other assets.

[49] As enacted in 1949, the current section 9 was section 11. It was designated as section 9 by P.L. 85-507 (Footnote 12). As enacted in 1949, section 9 provided:

> SEC. 9. The Director is authorized to establish and fix the compensation for not more than three positions in the professional and scientific field, within the Agency, each such position being established to effectuate those scientific intelligence functions relating to national security, which require the services of specially qualified scientific or professional personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this section shall not be less than $10,000 per annum nor more than $15,000 per annum, and shall be subject to the approval of the Civil Service Commission.

The smaller amount was increased from $10,000 to $13,100 by P.L. 81-697 (64 Stat. 450, August 16, 1950). Section 9, as amended, was repealed in 1954 by section 601 of P.L. 83-763 (68 Stat. 1105, September 1, 1954), increases in compensation rates for government employees having obviated the need to compensate scientific personnel at rates higher than those applicable to General Schedule employees. See page 116 of PART VI as to more recent legislation concerning scientific pay rates.

TRANSMITTAL SHEET #4 — *Guide to Central Intelligence Agency Statutes and Law*

Transmitted herewith for filing in the *Guide* are new pages updating, correcting, and revising PART VI "Extracts from Statutes Having Special Application to the Central Intelligence Agency or CIA Activities."

The new pages include several statutes of special significance to CIA enacted since the most recent changes were made in PART VI, in July 1971. The new statutes are the Drug Abuse Act of 1972, the Crime Control Act of 1973, the Foreign Assistance Act of 1974 and the Privacy Act of 1974.

The treatment of the statutes heretofore included in PART VI has been modified somewhat, primarily to more precisely confine the statute texts and comments to the CIA aspects of the statute, to improve the *Guide* as a legal reference tool and to minimize detail which is apt to become obsolete and therefore to require updating. In addition, a somewhat lengthy note prefaces the Index to PART VI, again to further the use of the *Guide* as a legal reference tool.

There is some duplication of page numbers, that is, the new pages herewith are numbered 151 to 190 while the pages of PART VII (Executive Orders) are numbered 161 to 175 and PART VIII (Comptroller General Decisions) includes pages numbered 187-190. This duplication is to be corrected by revision of PARTS VII and VIII at an early date. Meanwhile the duplicate numbered pages are distinguishable by their dates.

As mentioned in TRANSMITTAL SHEET #3, we are disseminating this material on the basis of our most current distribution list, which however is out of date by reason of reorganizations, retirements, and perhaps for other reasons. Please let us have an update of your component's requirements, and it would be useful if this could be addressed to us in writing. Additional copies of the *Guide*, as well as copies of this dissemination, are available. We again invite comments and suggestions and we particularly request that errors be brought to our attention. For these purposes, please contact Richard H. Lansdale, Associate General Counsel (x7521).

FILING INSTRUCTIONS

Remove all pages of PART VI (Contents page and pages 111-148) and insert pages transmitted herewith (Index pages VI-i and VI-ii and pages 151-153, 155-159, 161-167, 169-171, 173-179, 181, 183, 185, 187 and 189-190, all dated March 1976).

This TRANSMITTAL SHEET is to be filed at PART IX to permit the user of the *Guide* to determine the currency of his copy of the *Guide* by checking against all TRANSMITTAL SHEETS. Since this TRANSMITTAL SHEET also contains information on how to use the *Guide*, as well as other explanatory comments, this SHEET, or a copy of it, should be circulated within Agency components for the information of users of the *Guide*.

John S. Warner

JOHN S. WARNER
General Counsel

ERRATA SHEET—*Guide to Central Intelligence Agency Statutes and Law*

New pages for the *Guide to Central Intelligence Agency Statutes and Law* were distributed on 20 August by TRANSMITTAL SHEET #2—*Guide to Central Intelligence Agency Statutes and Law,* dated July 1971. The pages, when distributed to recipients, were assembled in such a way, however, that TRANSMITTAL SHEET #2, which contains the filing instructions by which the new pages are to be inserted in the *Guide,* did not appear as the top page of the new pages. (The top page of the distributed packets is entitled "CONTENTS—Executive Orders Having Special Application to CIA[1]".) Recipients therefore may have difficulty in determining what the new pages are and what is to be done with them. Recipients should locate TRANSMITTAL SHEET #2 in their packet of papers and follow the filing instructions contained therein.

There is an error in the filing instructions set out in TRANSMITTAL SHEET #2. That SHEET instructs that pages 147-149 are to be filed. In fact there is no page 149. The instructions should read: "147-148".

This ERRATA SHEET also should be filed in PART IX with the TRANSMITTAL SHEETS.

August 1971

CONTENTS—National Security Act of 1947, as amended

September 1970

TRANSMITTAL SHEET #2—*Guide to Central Intelligence Agency Statutes and Law*

This SHEET transmits new pages for filing in the *Guide*. The new pages include several new statutes, decisions and actions and make corrections of certain minor errors.

In PART VI the Federal Pay Comparability Act of 1970 is covered in a revision of the treatment of the Classification Act of 1949, since pay rates for CIA employees are established, under the authority of the CIA Act and in consequence of the Agency's exemption from the Classification Act, in amounts set under the Federal Pay Comparability Act of 1970. In rewriting the Classification Act material, we have deleted coverage of the Federal Executive Salary Act of 1964 and have treated that Act separately, since it has specific applications to CIA. Another newly enacted statute included is the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, from part of which CIA is specifically exempt. Also included in the new material for PART VI are two existing statutes with particular CIA application but which have not been published in the *Guide* heretofore, namely, the statute to prevent the Disclosure of Classified Information Concerning Cryptographic Systems and Communications Intelligence Activities of the United States (section 798 of Title 18) and the act which imposes on all departments and agencies a duty to assist in protecting the President.

With respect to the National Security Act of 1947 (PART I), we have added certain background material which explains the legal significance of the 1953 amendment which established by statute the office of Deputy Director (Footnotes 12, 15 and 17 of PART I are revised). Also in PART I we have brought up to date the coverage of *Heine v. Raus*, which was disposed of by the Supreme Court in April 1971 (the last paragraph of Footnote 21 is revised). And finally, we have added a Footnote 22A which sets out the legal relationships of the Office of Strategic Services, Strategic Services Unit, Central Intelligence Group and the Central Intelligence Agency.

Footnote 4 of PART IV (President's Foreign Intelligence Advisory Board) has been revised to record the appointment of Governor John Connally as a member of the Board, and his failure to take office in view of his subsequent appointment as Secretary of the Treasury, and the appointment of Dr. Edward Teller as a member.

In PART VII we have revised the coverage of Executive Order 10450, Security Requirements for Government Employees.

Several errors and cross references have been corrected on various pages. In order to continue the arrangement whereby the statutes listed in PART VI appear in chronological order (based on the enactment or amendment specifically applicable to CIA), it was necessary to reprint several pages in PART VI which are not changed, and several new pages are numbered with decimal numbers.

FILING INSTRUCTIONS

In the PREFACE, remove pages i and ii and insert new pages of the same numbers.

In PART I remove the CONTENTS page and pages 5, 6 and 9-20 and insert the new CONTENTS page and pages 5, 6 and 9-23.

Remove from PART IV pages 67-71 and insert new pages 67-71.

In PART VI remove the CONTENTS page and pages 113-116, 127, 128, 135 and 136. Insert the following pages:

CONTENTS—Statutes Having Special Application to CIA
113 – 116.6
127 – 128.1
135 – 135.2
136
142.1 – 142.5 (insert between pages 142 and 143)
147 – 149

In PART VII remove the CONTENTS page and pages 161-164 and insert new pages of the same name and numbers.

This TRANSMITTAL SHEET should be filed in PART IX, to enable the user to assure himself that his copy is up to date. As was the case with TRANSMITTAL SHEET #1, pages replaced by this TRANSMITTAL also could be filed in PART IX for reference purposes.

All new pages transmitted with this SHEET, except pages i, 6, 68, 113 and 136, are dated July 1971. Page i continues the February 1971 date; the remaining pages continue the date of September 1970.

Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel
Central Intelligence Agency

CONTENTS—Executive Orders Having Special Application to CIA [1]

[1] In addition to the executive orders listed in this TABLE OF CONTENTS, executive orders having special application to CIA are set out or cited at PART II, Footnote 4, and in PARTS III and IV. An excerpt from Executive Order 10899, Authorization for the Communication of Restricted Data by the Central Intelligence Agency, is included at pages 123 and 124 of PART VI. Certain other executive orders, which have been repealed or have become inoperative, are referred to in Footnotes 11 and 12 of PART I and in Footnote 28 of PART II.

July 1971

GUIDE TO
CENTRAL INTELLIGENCE AGENCY
STATUTES AND LAW

SEPTEMBER 1970

Office of General Counsel
Central Intelligence Agency

Approved For Release 2003/06/26 : CIA-RDP86B00269R000200020001-6

PREFACE

The *Guide to Central Intelligence Agency Statutes and Law* is a successor publication to our earlier *Text and Explanation of Statutes and Executive Orders Relating Specifically to the Central Intelligence Agency*. In arrangement, it is modeled in part on *Text and Explanation*, in that it consists of the texts (or excerpts from the texts) of statutes and executive orders having special significance to CIA and includes some historical and legal comments and annotations concerning those statutes and executive orders. But also included are digests or summaries of all court cases involving the three basic CIA statutes, several other court decisions significant to CIA and all Comptroller General decisions and several government regulations having specific application to CIA. A number of basic policy decisions also are indicated in certain Footnotes. The new name of the publication, therefore, seems more appropriate.

The Guide is arranged as follows:

PART I, excerpts from the National Security Act of 1947;
PART II, the CIA Act of 1949;
PART III, the Executive Order which established the National Security Medal;
PART IV, the Executive Order which established the President's Foreign Intelligence Advisory Board;
PART V, the CIA Retirement Act of 1964 for Certain Employees;
PART VI, excerpts from other statutes;
PART VII, excerpts from other executive orders;
PART VIII, Comptroller General decisions concerning CIA.

The five statutes and executive orders comprising PARTS I through V are presented in chronological order, and the materials within the other PARTS also are assembled on that basis. Thus, a time picture of successive legislative and other legal actions concerning CIA is presented.

A difference in the arrangement of the materials should be noted. In PARTS I, II, IV and V, the text is the language of the indicated

Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

(f) Effective when the Director first appointed under subsection (a) of this section has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946)[22] shall cease to exist; and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.[23]

TITLE III—MISCELLANEOUS

ADVISORY COMMITTEES AND PERSONNEL

SEC. 303. (a) The Secretary of Defense,[24] the Director of the Office of Defense Mobilization [now abolished],[25] the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary,[26] are authorized to appoint such advisory committees and to employ, consistent with other provisions of sections 171-171n, 172-172j, 181-1, 182-1, 411a, 411b, and 626-626d of Title 5,[27] and sections 401-403, 404, and 405 of this title,[28] such part-time advisory personnel[29] as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $50[30] for each day of service, as determined by the appointing authority. 50 U.S.C. 405

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of sections 281 [now 203],

283 [now 205], or 284 [now 207] of Title 18,[31] unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

EFFECTIVE DATE

SEC. 310. (a) The first sentence of section 202(a) and sections 1, 2, 307, 308, 309 and 310 shall take effect immediately upon the enactment of this Act.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.[32]

(Footnote 11—Continued)

dents. The primary Presidential action in this regard is a letter of January 16, 1962, from President Kennedy to Director John A. McCone:

> In coordinating and guiding the total intelligence effort, you will serve as Chairman of the United States Intelligence Board, with a view to assuring the efficient and effective operation of the Board and its associated bodies. In this connection I note with approval that you have designated your deputy to serve as a member of the Board, thereby bringing to the Board's deliberations the relevant facts and judgments of the Central Intelligence Agency.
>
> As directed by the President and the National Security Council, you will establish with the advice and assistance of the United States Intelligence Board the necessary policies and procedures to assure adequate coordination of foreign intelligence activities at all levels.
>
> With the heads of the Departments and Agencies concerned you will maintain a continuing review of the programs and activities of all U.S. agencies engaged in foreign intelligence activities with a view to assuring efficiency and effectiveness and to avoiding undesirable duplication.

See also *Public Papers of the Presidents of the United States, John F. Kennedy* (1961), p. 753, item 485; *Public Papers of the Presidents of the United States, Lyndon B. Johnson,* Vol. I (1965), p. 458, item 209 (Note). And see President Nixon's memorandum of March 24, 1969, for the Secretary of State, the Secretary of Defense, the Director of Central Intelligence, and the Chairman, President's Foreign Intelligence Advisory Board, quoted in full at page 68 of PART IV:

> I shall look to the Director of Central Intelligence to continue to provide coordination and guidance to the total foreign intelligence activities of the United States with the view to assuring a comprehensive and integrated effort on the part of the United States Government agencies.

The Director was a member of the Operations Coordinating Board, established by Executive Order 10483 (3 C.F.R., 1949-1953 Comp., p. 968, September 2, 1953) and continued in operation by Executive Order 10700 (3 C.F.R., 1954-1958 Comp., p. 360, February 25, 1957), until the Board was abolished by Executive Order 10920 (3 C.F.R., 1959-1963 Comp., p. 446, February 18, 1961).

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[12] The Act of 1947 did not include the position of Deputy Director. Subsections 102(a) and (b) were amended by section 1 of P.L. 83-15 (67 Stat. 19, April 4, 1953) to establish the position of Deputy Director, to direct the Deputy Director to "act for, and exercise the powers of, the Director during his absence or disability", and to cause the remainder of those subsections to apply also with respect to the Deputy Director. A decision of the Comptroller General in 1962 upheld the authority of the Deputy Director to perform the duties of the Director. "Our view is that it is inherent in the statutory position

(Footnote 12—Continued)

of the Deputy Director that the holder will assist the Director in the performance of his duties, including those vested by law in the Director." See 41 Comp. Gen. 429, January 2, 1962, also reprinted at page 195 of PART VIII. See also the action of the Director delegating to the Deputy Director "all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, . . . except for any authorities the delegation of which is prohibited by law" (Footnote 47, PART II).

An amendment of July 2, 1953 (67 Stat. 136, P.L. 83-102), to the Annual and Sick Leave Act of 1951 (65 Stat. 679, P.L. 82-233, October 30, 1951, 5 U.S.C.A. 6301 et. seq.) exempts from the Act any officer in the executive branch of the government "who is appointed by the President and whose rate of basic pay exceeds the highest rate payable" (5 U.S.C.A. 6301) under the General Schedule established by the Classification Act of 1949 (5 U.S.C.A. 5101 et seq). The amendment also authorizes the President to exempt officials from the provisions of the Act (5 U.S.C.A. 6301). The premise of the amendment is that the duties and responsibilities of certain officials are so important that "such officials never completely divest themselves of their responsibilities even during periods of vacation or illness" (Sen. Rep. No. 294, 83rd Cong., 1st Sess., May 19, 1953, p. 1). President Eisenhower, by Executive Order 10540 (3 C.F.R., 1954-1958 Comp., p. 196, June 29, 1954), designated certain officials as exempt from the Act, including the Deputy Director. The President's action thus served to recognize and confirm the importance of the duties of the Deputy Director. Since the rate of basic pay of the Deputy Director now exceeds the highest rate payable under the General Schedule, the Deputy Director is exempt by the terms of the Annual and Sick Leave Act and the Executive Order no longer has effect as to him.

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[13] The following men have been appointed Director of Central Intelligence under the authority of the Act, and served in that capacity for the periods indicated:

Rear Admiral Roscoe Henry Hillenkoetter, USN
September 26, 1947–October 7, 1950
Lieutenant General (later General) Walter Bedell Smith, USA
October 7, 1950–February 9, 1953
Allen Welsh Dulles
February 26, 1953–November 29, 1961
John Alex McCone
November 29, 1961–April 28, 1965
Vice Admiral William Francis Raborn, Jr., USN (Retired)
April 28, 1965–June 30, 1966
Richard McGarrah Helms
June 30, 1966–

Admiral Hillenkoetter took office on September 26, 1947, under a recess appointment. He was nominated by the President on November 24 and confirmed by the Senate on December 8, 1947. Admiral Hillenkoetter also had been appointed Director of Central Intelligence, and had served in that capacity from May 1, 1947, to September 26, 1947, under the authority of the President's Directive of January 22, 1946, which had established that Office as

(Footnote 13—Continued)
well as the National Intelligence Authority and the Central Intelligence Group. See the text of that Directive at Footnote 22. Mr. Dulles also served as Acting Director from February 9 to February 26 in 1953.

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[14] The following men have been appointed Deputy Director of Central Intelligence under the authority of section 102(a) of the Act, as amended, and served in the capacity for the periods indicated:

Lieutenant General (later General) Charles Pearre Cabell, USAF
April 23, 1953–January 31, 1962
Lieutenant General Marshall Sylvester Carter, USA
April 3, 1962–April 28, 1965
Richard McGarrah Helms
April 28, 1965–June 30, 1966
Vice Admiral Rufus Lackland Taylor, USN
October 13, 1966–January 31, 1969
Lieutenant General Robert Everton Cushman, Jr., USMC
May 7, 1969–

Also appointed and serving as Deputy Director under the Act during the period when that office was not a statutory position (September 18, 1947, to April 4, 1953) were:

Brigadier General Edwin Kennedy Wright, USA
September 26, 1947–March 9, 1949
William Harding Jackson
October 7, 1950–August 3, 1951
Allen Welsh Dulles
August 23, 1951–February 26, 1953.

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[15] This proviso was enacted by P.L. 83-15 (Footnote 12).

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[16] The 1947 Act set the pay of the Director at $14,000 per year and, if he was a commissioned officer of the Armed Forces, he was to be paid from Agency funds "compensation at a rate equal to the amount by which $14,000 exceeds the amount of his annual military pay and allowances." The rate of basic compensation of the Director was raised to $16,000 per annum, and that of the Deputy Director of Central Intelligence (which was not then a statutory office) set at $14,000 per annum, by sections 4 and 6 of P.L. 81-359 (63 Stat. 880, October 15, 1949), a statute which established compensation rates for cabinet and other senior positions in the government. Compensation for the Deputy Director was increased to $14,800 by administrative action pursuant to section 10 (now section 8) of the CIA Act and P.L. 82-375 (66 Stat. 101, June 5, 1952), with retroactive effect to June 30, 1951. The provision that the amount to be paid by CIA to a commissioned officer of the armed services appointed Director or Deputy Director is "the amount by which the compensation

(Footnote 16—Continued)
established for such position exceeds the amount of his annual military pay and allowances" was added by the amendment of April 4, 1953 (Footnote 12). A 1965 decision of the Comptroller General holds that because of the Dual Compensation Act (78 Stat. 484, P.L. 88-448, August 19, 1964) those provisions of the National Security Act, as amended, "relating to the civilian compensation and retired pay of a retired commissioned officer who may be appointed as Director of the Central Intelligence Agency no longer are in effect" (44 Comp. Gen. 708, May 12, 1965, summarized at page 199 of PART VIII). Under the ruling, the Director, if he is a retired commissioned officer, receives both the compensation of his civilian position and that portion of his retired pay permitted by the Dual Compensation Act, namely, $2,000 "plus one-half of the remainder" of his retired pay. The ruling would apply also with respect to the compensation of the Deputy Director if he is a retired commissioned officer.

Compensation for the Director was raised to $21,000, and that of the Deputy Director to $20,500, by sections 104 and 105 of the Federal Executive Pay Act of 1956 (70 Stat. 736, P.L. 84-854, July 31, 1956). Sections 302 and 303 of the Federal Executive Salary Act of 1964 (78 Stat. 415, P.L. 88-426, August 14, 1964) established the Federal Executive Salary Schedule, placed the office of the Director in Level II and that of the Deputy Director in Level III thereof, and set the annual rates of basic compensation for those Levels at $30,000 and $28,500, respectively. The latter was raised to $29,500 by section 215 of the Federal Salary Act of 1967 (81 Stat. 624, P.L. 90-206, December 16, 1967).

Section 225 of the Federal Salary Act of 1967 established the Commission on Executive, Legislative, and Judicial Salaries to conduct "a review of the rates of pay of" various senior positions in the government, including those in Levels II and III, and to report to the President the results of its review "together with its recommendations." The President, in turn, is required to include "in the budget next submitted by him to the Congress after the date of the submission of the report and recommendations of the Commission . . . his recommendations with respect to the exact rates of pay which he deems advisable" for those positions. The President, on January 15, 1969, recommended for Levels II and III, $42,500 and $40,000, respectively, and Congress took no contrary action. (Further in compliance with section 225, the President's recommendations were published in 34 Fed. Reg. 2241 (February 12, 1969), 3 C.F.R., 1969 Comp., p. 217, and 83 Stat. 63.) The effective date, in the case of the new pay rates of the Director and Deputy Director, thus was March 1, 1969.

Under section 225, Executive Schedule pay rates are to be established by this procedure every four years.

The statute establishing the Executive Schedule is codified at 5 U.S.C.A. 5311-5317. The provisions establishing the Commission and the procedures for setting executive pay rates are codified at 2 U.S.C.A. 351-361.

[17] Subparagraph (3) was first enacted by P.L. 83-15 (Footnote 12.)

[18] Section 7501 of Title 5 prohibits the removal or suspension of any individual in the competitive service except "for such cause as will promote the efficiency of the service", and prescribes procedures for removals. Sections 2102 and 2101 of Title 5 define the "competitive service" to include all appointive positions in the executive branch except "positions which are specifically excepted from the competitive service by or under statute". Since CIA employees are appointed under the authority of section 8(a) of the CIA Act, which authorizes expenditures for personal services notwithstanding "any other provisions of law", CIA positions are excluded from the competitive civil service. Enactment of the CIA Act in 1949, subsequent to the enactment of the National Security Act in 1947, thus obsolesced the reference to section 7501.

[19] *Kochan v. Dulles*

The authority of the Director to terminate an employee under this subsection was challenged by a former employee in a suit in 1959 in the United States District Court for the District of Columbia, in which he sought reinstatement and back pay. The Court (Judge Holtzoff) granted the Government's motion for summary judgment, holding that subsection 102(c) "constitutes complete authority for the action taken against the plaintiff" and that the Director had "plenary power to discharge any employee at will." The Court also stated "the Director had a right to discharge this man for any reason, or no reason at all." And the Court noted that although the Director in this case explained why the plaintiff was discharged, "the law does not require him to do so." *Kochan v. Dulles,* Civ. Act. No. 2728-58, May 20, 1959 (unpublished). The ruling was not appealed.

Torpats v. Dulles

In 1961 the Director's authority under this subsection again was judicially challenged by another terminated employee, also in the United States District Court for the District of Columbia, he also seeking to be restored to his former position. Again the Court, without issuing an opinion, granted summary judgment for the defendant. *Torpats v. Dulles,* Civ. Act. No. 1111:61, July 27, 1961. On appeal, the United States Court of Appeals for the District of Columbia noted "that the statute vests in the Director of the Central Intelligence Agency a broad discretion to terminate employees in the interest of the United States, but it is to be distinguished from a so-called 'security' discharge such as was involved in *Service v. Dulles,* 354 U.S. 363 (1957), and related cases." The Court held "that the Director acted within the authority conferred upon him by Congress and in accordance with his own regulations." Plaintiff's petition for rehearing was denied. *Torpats v. McCone,* 300 F. 2d 914, March 23, 1962, April 11, 1962. The Supreme Court declined to accept an appeal. *Torpats v. McCone,* 371 U.S. 886, November 5, 1962.

Rhodes v. United States

The Director's authority again was tested in a 1962 case, this time in the United States Court of Claims. The terminated employee, after an unsuccessful

(Footnote 19—Continued)

appeal to the Civil Service Commission, sought damages for an alleged wrongful termination, contending that he was terminated in violation of the Veterans' Preference Act, the regulations of the Civil Service Commission and those of the Central Intelligence Agency. The Court indicated that cross motions for summary judgment presented two questions: (1) whether the Director had discretion to terminate plaintiff's employment with the Agency when the Director deemed such termination either necessary or advisable in the interests of the United States, and (2) whether the Agency violated its own regulations in terminating plaintiff's employment. From the decision of the Court, it also appears the plaintiff was contending that the action of the Commission was arbitrary and capricious. In granting motion for summary judgment for the defendant, the Court held that clearly the statute and implementing regulation "gave the Director of Central Intelligence Agency the absolute right to terminate any employee whenever he deemed it necessary or advisable." Further, "we hold that no regulation of the Central Intelligence Agency was violated when plaintiff's employment was terminated and, consequently, the action of the Civil Service Commission could not be arbitrary, capricious or contrary to law." Plaintiff's motion for reconsideration was denied. *George S. Rhodes v. United States*, 156 Ct. Cl. 31, January 12, 1962, April 4, 1962. The Supreme Court declined to accept an appeal. *Rhodes v. United States*, 371 U.S. 821, October 8. 1962.

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[20] Subsection (d) is the statutory authority for directives by the National Security Council under which CIA collects, evaluates, correlates and disseminates foreign intelligence, and performs additional services of common concern, and other functions and duties related to intelligence affecting the national security.

The Atomic Energy Act of 1954 authorizes the Atomic Energy Commission to protect certain information concerning atomic energy (Restricted Data) and specifically authorizes the Commission to remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director jointly determine "to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information." See extracts from the Atomic Energy Act at page 121 of PART VI. This provision in the Atomic Energy Act is the only statute, other than section 102(d) of the National Security Act, which confers joint authority on the Director of Central Intelligence and another agency to carry out the provisions of section 102(d).

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[21] *United States v. Jarvinen*

The authority to exercise the responsibility established by this proviso was at issue in a criminal case in the United States District Court for the Western District, State of Washington in 1952. One Jarvinen, a Seattle travel agent, had been developed by the CIA office in Seattle as a source of foreign intelligence information. On one occasion he reported to CIA representatives that

(Footnote 21—Continued)

a Seattle lawyer had booked passage to Moscow and return for Professor Owen Lattimore. The CIA representatives referred Jarvinen to the FBI office in Seattle to whom he also reported the information. Subsequently, Jarvinen advised CIA and FBI representatives that his report was a fabrication. He was indicted for furnishing false information to government agencies (18 U.S.C. 1001). The Agency was concerned with the adverse effect that public identification of the informant by CIA representatives would have on the development and retention of intelligence sources. Accordingly, the Director instructed the CIA officers not to testify on this point, and they of course complied. The CIA General Counsel was permitted to make an appearance at the trial to present the CIA position on this one issue. (Thus, the novel situation wherein a United States Attorney is attempting to compel testimony, and another government legal officer is urging to the contrary.) He argued that the Director had authority under 102(d)(3) to direct the refusal to testify and to assert executive privilege. The Court permitted the prosecution to continue to question the witnesses and, when the CIA representatives continued to refuse to answer, ordered a separate hearing on the question of criminal contempt. In that hearing, the Court again denied the claim of privilege and convicted the two, on October 3, 1952. The Court relied heavily on the fact that the trial was for a *criminal* offense, and felt that all testimony therefore must be heard to insure a fair trial. It was, the Court held, a matter of having all pertinent testimony aired, and not allowing the claim of privilege to be abused. The attorneys involved—the Department of Justice, CIA General Counsel, the local defense counsel and Donovan, Leisure, Newton and Irvine (General William J. Donovan's firm whose services had been offered *pro bono publico*)—independently concluded the fact situation was not a good one on which to appeal. Since the intelligence source was hardly a secret one and since no classified information was involved, an appeal, risking an adverse decision in terms harmful to the exercise of the Director's responsibility to protect sources and methods in the future, was not warranted. Pardon was sought, and granted by President Truman on December 16, 1952. Jarvinen, in the original case, was acquitted. *United States v. Jarvinen*, No. 48547, October 1952 (unpublished).

Heine v. Raus

The reach of this proviso again was at issue in a case filed in 1964 in the United States District Court for Maryland (*Heine v. Raus*, 261 F. Supp. 570, December 8, 1966). The plaintiff contended he was slandered by a Central Intelligence Agency employee who, pursuant to instructions, had warned "members of the Estonian emigre groups that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent." The defendant's motion for summary judgment asserted the defense of absolute privilege on the ground that when he made certain defamatory statements he was acting within the scope and course of his employment by the Central Intelligence Agency on behalf of the United States, and had been instructed by the Central Intelligence Agency to give the warning concerning Heine. Additionally, the United States asserted its privilege against disclosing state secrets. Summary judgment was entered for the defendant. The Court concluded that an official who acts under the orders of a superior official, which he has a duty to carry out, is absolutely exempt from liability if the harm done by him is done solely in implicit obedience to

(Footnote 21—Continued)

an order lawful upon its face. Further, the Court concluded the action complained of was within the outer perimeter of the defendant's line of duty. One "of the functions entrusted to the Central Intelligence Agency and its Director is 'protecting intelligence sources and methods from unauthorized disclosure'" and it "is reasonable that emigre groups from nations behind the Iron Curtain would be a valuable source of intelligence information as to what goes on in their old homeland. . . . The court concludes that activities of the Central Intelligence Agency to protect its foreign intelligence sources located in the United States are within the power granted by Congress to the CIA." Moreover, the "fact that the immediate intelligence source is located in the United States does not make it an 'internal-security' function" within the limiting proviso of clause (3) of subsection 102(d). With respect to the assertion of privilege by the government, the Court held that the proviso of clause (3), together with section 6 of the Central Intelligence Agency Act, as amended, and Executive Order 10501, as amended (which requires the protection of classified information), reinforces the well established principle that the government has and may assert a privilege against revealing state secrets without thereby causing the facts at issue to be taken as established against the government.

On appeal, the United States Court of Appeals, Fourth Circuit, in an opinion by Chief Judge Haynsworth, affirmed "the right of the Central Intelligence Agency in this case to invoke the governmental privilege against disclosure of state secrets" as enunciated by the District Court. "The Court made sufficient inquiry—some of it *in camera*—to assure that it had not been done lightly, without pressing so far as to reveal the very state secrets the privilege is intended to protect." With respect to the question of executive privilege, the Court of Appeals generally upheld the District Court. "The CIA and its Director are specifically charged with the duty and responsibility of protecting sources of foreign intelligence and methods of collecting such intelligence from unauthorized disclosure That aliens within this country are sources of foreign intelligence, as claimed by the Director, has been recognized by the Congress. If the Director determines that an alien's entry for permanent residence in the United States is in the interest of national security or essential to the Agency's intelligence mission, the entry of the alien and his family is allowed though they would be otherwise inadmissible." (The Court here is referring to section 7 of the CIA Act.) Noting a difference between the facts in this case and those in a leading Supreme Court decision, the Court said, "action here to protect the integrity of sources of foreign intelligence was explicitly directed by Congress." The Court concluded the absolute privilege is available to Raus "if his instructions were issued with the approval of the Director or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions was subsequently ratified and approved by such official." The Court of Appeals vacated judgment and remanded to the District Court for appropriate findings on that point. "The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a

(Footnote 21—Continued)

subordinate official, having authority to do so, authorized, approved, or ratified the instructions. If such disclosures are reasonably thought by the District Judge to violate the claimed privilege for state secrets, they may be made *in camera*, to that extent."

One judge dissented. He agreed with Chief Judge Haynsworth's basis for remand, but he thought the decision for summary judgment was additionally deficient. He would have the scope of Raus' duties be further developed before the District Court and he would not rely on the affidavits submitted for Raus. He further wrote: "The National Security Act specifically delegates to the *Director*, and not to the Agency, the statutory power relied on by the CIA and the district judge to justify the defamatory statements, and the affidavits do not suggest that the Director personally instructed Raus to defame Heine, nor is there any showing that the Director approved the defamation of Heine or properly delegated his responsibility to protect intelligence sources." And finally, he distinguished the *Heine* case from a leading recent Supreme Court decision in which absolute privilege on the part of a government employee who had defamed two subordinate employees was upheld. He thought the immunity conferred by that case "has no application to a fact situation where defamation is chosen by a government agency as deliberate policy." *Heine v. Raus*, 399 F. 2d 785, July 22, 1968.

The District Court conducted the limited inquiry directed by the Fourth Circuit, heard argument of counsel and admitted into evidence additional affidavits and written answers to questions, and entered summary judgment for the defendant. *Heine v. Raus*, 305 F. Supp. 816, November 3, 1969. This decision has been appealed.

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[22] The Federal Register citation is to the President's Directive of January 22, 1946 (3 C.F.R., 1943-1948 Comp., p. 1080), establishing the National Intelligence Authority and the Central Intelligence Group. That Directive, set out below, has striking similarities with subsection 102(d):

PRESIDENTIAL DIRECTIVE OF
JANUARY 22, 1946

Coordination of Federal Foreign Intelligence Activities

The White House,
Washington, January 22, 1946.

To The Secretary of State, The Secretary of War, and The Secretary of the Navy.

1. It is my desire, and I hereby direct, that all Federal foreign intelligence activities be planned, developed and coordinated so as to assure the most effective accomplishment of the intelligence mission related to the national security. I hereby designate you, together with another person to be named by me as my personal representative, as the National Intelligence Authority to accomplish this purpose.

2. Within the limits of available appropriations, you shall each from time to time assign persons and facilities from your respective De-

(Footnote 22—Continued)

partments, which persons shall collectively form a Central Intelligence Group and shall, under the direction of a Director of Central Intelligence, assist the National Intelligence Authority. The Director of Central Intelligence shall be designated by me, shall be responsible to the National Intelligence Authority, and shall sit as a non-voting member thereof.

3. Subject to the existing law, and to the direction and control of the National Intelligence Authority, the Director of Central Intelligence shall:

a. Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence. In so doing, full use shall be made of the staff and facilities of the intelligence agencies of your Departments.

b. Plan for the coordination of such of the activities of the intelligence agencies of your Departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

c. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

d. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.

4. No police, law enforcement or internal security functions shall be exercised under this directive.

5. Such intelligence received by the intelligence agencies of your Departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions.

6. The existing intelligence agencies of your Departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.

7. The Director of Central Intelligence shall be advised by an Intelligence Advisory Board consisting of the heads (or their representatives) of the principal military and civilian intelligence agencies of the Government having functions related to national security, as determined by the National Intelligence Authority.

(Footnote 22—Continued)

8. Within the scope of existing law and Presidential directives, other departments and agencies of the executive branch of the Federal Government shall furnish such intelligence information relating to the national security as is in their possession, and as the Director of Central Intelligence may from time to time request pursuant to regulations of the National Intelligence Authority.

9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions, except as provided by law and Presidential directives.

10. In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods.

Sincerely yours,

HARRY S. TRUMAN

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[23] As indicated at Footnote 13, the first Director appointed under subsection 102(a) took office as of September 26, 1947. Thus, the National Intelligence Authority and the Central Intelligence Group ceased to exist as of that date and personnel, property, records and funds thereupon transferred to CIA. CIA was established as of September 18, 1947. See Footnote 32.

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[24] Notwithstanding that the text of this section of the Code continues to list the Secretary of Defense, section 303(a) of the National Security Act was repealed, as to the Secretary of Defense, by section 53 of P.L. 84-1028 (70A Stat. 641, August 10, 1956). But that statute confers similar authority on the Secretary (10 U.S.C.A. 173).

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[25] Section 303(a) of the 1947 Act listed "the Chairman of the National Security Resources Board." An amendment of 1954 substituted for that language the "Director of the Office of Defense Mobilization" (68 Stat. 1226, P.L. 83-779, September 3, 1954). A series of reorganization plans and statutes, as set out at Footnote 6, abolished the National Security Resources Board and transferred its functions to the Office of Emergency Preparedness.

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[26] The "National Security Council, acting through its Executive Secretary" was added by the National Security Act Amendments of 1949 (Footnote 4).

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[27] The subsections of Title 5, as listed above, have been renumbered by the 1966 codification of Title 5. See the Table of former and new sections of Title 5 at pp. XXI, XXII, XXIV and XXVII of 5 U.S.C.A. (1967).

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[28] The listed subsections of "this title" are sections 2, 101, 102, 103, and 303 of the National Security Act.

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[29] The Civil Service Commission by regulation, requires government employees, including "special government employees," to submit to their employing agency or department statements of employment and financial interests. A "special government employee" is defined as an officer or employee of the

(Footnote 29—Continued)

executive branch of the government "who is retained, designated, appointed or employed to perform with or without compensation, but not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis." At the request of CIA, the Commission in April 1969 amended its regulation to exclude from that reporting requirement any "special government employee" who is a "specialist appointed for intermittent confidential intelligence consultation of brief duration" (5 C.F.R. 735.412).

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[30] The 1947 Act authorized compensation "not to exceed $35". The amount was increased to "$50" by section 10 of the National Security Act Amendments of 1949 (Footnote 4).

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[31] In the 1947 Act, the reference was to "section 109 or 113 of the Criminal Code (U.S.C., 1940 edition, title 18, secs. 198 and 203), or section 19(e) of the Contract Settlement Act of 1944." That language was replaced by the current language by section 8 of P.L. 83-779 (Footnote 25).

Section 2 of P.L. 87-849 repealed sections 281 and 283 (except as they may apply to retired officers of the Armed Forces of the United States) and section 284 and "supplanted" them with sections 203, 205 and 207 (76 Stat. 1119, October 23, 1962). Section 203 of Title 18 prohibits graft. Sections 205 and 207 prohibit activities by government employees and former employees inconsistent with their government employment duties.

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[32] The National Security Act was enacted July 26, 1947. James V. Forrestal took office as the first Secretary of Defense on September 17, 1947. The effective date of those provisions of the National Security Act of 1947 set forth in the *Guide* (other than section 310) therefore was September 18, 1947, and the Central Intelligence Agency was established as of that date.

The National Military Establishment, the Office of Secretary of Defense and the Department of the Air Force also were established by the National Security Act, and the War Department was redesignated the "Department of the Army." By the operation of section 310 these actions also were effective September 18, 1947. The National Military Establishment was redesignated the "Department of Defense," effective August 10, 1949, by the National Security Act Amendments of 1949 (Footnote 4).

Executive Order 11460
ESTABLISHING THE
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

(E.O. 10656, 3 C.F.R., 1954-1958 Comp., p. 300, February 6, 1956;
E.O. 10938, 3 C.F.R., 1959-1963 Comp., p. 469, May 4, 1961;
E.O. 11460, 3 C.F.R., 1969 Comp., p. 112, March 20, 1969)[1]

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. There is hereby established the President's Foreign Intelligence Advisory Board,[2] hereinafter referred to as "the Board". The Board shall:

(1) advise the President concerning the objectives, conduct, management and coordination of the various activities making up the overall national intelligence effort;

(2) conduct a continuing review and assessment of foreign intelligence and related activities in which the Central Intelligence Agency and other Government departments and agencies are engaged;

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[1] Of these three executive orders, only E.O. 11460 continues in force. The others are cited here merely to indicate the chronology of the instruments which established the current President's Foreign Intelligence Advisory Board and its predecessor organizations.

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[2] The President's Foreign Intelligence Advisory Board is traceable to a recommendation in the Report of the Commission on Organization of the Executive Branch of the Government (the Second Hoover Commission) of June 1955, "Intelligence Activities":

Recommendation:

(a) That the President appoint a committee of experienced private citizens, who have the responsibility to examine and report to him periodically on the work of Government foreign intelligence activities. This committee should also give such information to the public as the President may direct. The committee should function on a part-time and per diem basis.

Executive Order 10656, February 6, 1956, established the President's Board of Consultants on Foreign Intelligence Activities, and otherwise implemented most of the features of that recommendation. That Executive Order was revoked and the President's Foreign Intelligence Advisory Board was established by Executive Order 10938, May 4, 1961.

(3) receive, consider and take appropriate action with respect to matters identified to the Board, by the Central Intelligence Agency and other Government departments and agencies of the intelligence community, in which the support of the Board will further the effectiveness of the national intelligence effort; and

(4) report to the President concerning the Board's findings and appraisals, and make appropriate recommendations for actions to achieve increased effectiveness of the Government's foreign intelligence effort in meeting national intelligence needs.

SEC. 2. In order to facilitate performance of the Board's functions, the Director of Central Intelligence and the heads of all other departments and agencies [3] shall make available to the Board all information with respect to foreign intelligence and related matters which the Board may require for the purpose of carrying out its responsibilities to the President in accordance with the terms of this Order. Such information made available to the Board shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and regulations.

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[3] Executive Order 11460 was followed by an implementing letter from President Nixon to the responsible officials:

The White House
March 24, 1969

MEMORANDUM FOR:
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

SUBJECT: UNITED STATES FOREIGN INTELLIGENCE ACTIVITIES

My issuance on March 20, 1969, of Executive Order Number 11460 establishing the President's Foreign Intelligence Advisory Board, is in keeping with this Administration's objective of strengthening wherever possible the collection, evaluation and timely dissemination of reliable foreign intelligence by the military and civilian agencies of Government. The Board is charged with the responsibility of being able to assure me at all times of the quality, responsiveness and reliability of the intelligence provided to policy-making personnel.

SEC. 3. Members of the Board shall be appointed by the President from among persons outside the Government,[4] qualified on

(Footnote 3—Continued)

I shall look to the Director of Central Intelligence to continue to provide coordination and guidance to the total foreign intelligence activities of the United States with the view to assuring a comprehensive and integrated effort on the part of the United States Government agencies.

As provided in the Executive Order, it shall be the responsibility of the Foreign Intelligence Advisory Board to review and keep me advised concerning all significant aspects of foreign intelligence and related activities in which the Central Intelligence Agency and other elements of the intelligence community are engaged. Because of the importance of the strategic nuclear threat, I have also assigned to the Board a special responsibility to make a yearly, independent assessment of the nuclear threat, supplementing regular intelligence assessments made thereon by the intelligence community.

In order that the Board may be enabled to fulfill its tasks, I ask the heads of the Departments and Agencies concerned to furnish complete information and full cooperation to the Board for the purpose of carrying out its responsibilities to me.

RICHARD NIXON

[4] Also on March 20, 1969, it was announced that the President had appointed as members of the Board (*Weekly Compilation of Presidential Documents*, March 24, 1969, p. 441):

Maxwell D. Taylor, *Chairman*, president, Institute for Defense Analyses
George W. Anderson, former Chief of Naval Operations
William O. Baker, vice president, research, Bell Telephone Laboratories, Inc.
Gordon Gray, former Special Assistant to the President for National Security Affairs
Edwin H. Land, president, Polaroid Corp.
Franklin B. Lincoln, Jr., member of the New York law firm, Mudge, Rose, Guthrie & Alexander
Franklin D. Murphy, chairman of the board, Times Mirror Company
Robert D. Murphy, chairman of the board, Corning Glass International
Frank Pace, Jr., president, International Executive Service Corps
Nelson A. Rockefeller, Governor of New York

The President, on April 27, 1970, announced his acceptance of the resignation of General Taylor, as member and chairman, effective, April 30, 1970, and his appointment of Admiral Anderson as chairman, effective May 1, 1970. See *Weekly Compilation of Presidential Documents*, May 4, 1970, p. 588.

the basis of knowledge and experience in matters relating to the national defense and security, or possessing other knowledge and abilities which may be expected to contribute to the effective performance of the Board's duties. The members of the Board shall receive such compensation and allowances, consonant with law, as may be prescribed hereafter.

SEC. 4. The Board shall have a staff headed by an Executive Secretary, who shall be appointed by the President and shall receive such compensation and allowances, consonant with law, as may be prescribed by the Board. The Executive Secretary shall be authorized, subject to the approval of the Board and consonant with law, to appoint and fix the compensation of such personnel as may be necessary for performance of the Board's duties.

SEC. 5. Compensation and allowances of the Board, the Executive Secretary, and members of the staff, together with other expenses arising in connection with the work of the Board, shall be paid from the appropriation appearing under the heading "Special Projects" in the Executive Office Appropriation Act, 1969, Public Law 90–350,[5] 82 Stat. 195, and, to the extent permitted by law, from any corresponding appropriation which may be made for subsequent years.[6] Such payments shall be made without regard to the provisions of section 3681 of the Revised Statutes and section

[5] The pertinent language of P.L. 90-350 is as follows:

TITLE III—EXECUTIVE OFFICE OF THE PRESIDENT

SPECIAL PROJECTS

For expenses necessary to provide staff assistance for the President in connection with special projects, to be expended in his discretion and without regard to such provisions of law regarding the expenditure of Government funds or the compensation and employment of persons in the Government service as he may specify, $1,500,000: *Provided,* That not to exceed 20 per centum of this appropriation may be used to reimburse the appropriation for "salaries and expenses, The White House Office", for administrative services: *Provided further,* That not to exceed $10,000 shall be available for allocation within the Executive Office of the President for offical reception and representation expenses.

[6] An example of a "corresponding appropriation which may be made for subsequent years" is in TITLE III of the appropriation act for the Executive Office of the President, 1970 (83 Stat. 116, P.L. 91-74, September 29, 1969), in language identical with that of TITLE III of P.L. 90-350.

9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672[7] and 673).[8]

SEC. 6. Executive Order No. 10938 of May 4, 1961,[9] is hereby revoked.

RICHARD NIXON

The White House,
March 20, 1969.

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[7] Section 672 of Title 31 prohibits Government accounting and disbursing officers from allowing or paying any account or charge in any way connected with any commission or inquiry (except courts-martial and military or naval courts of inquiry) "until special appropriations shall have been made by law to pay such accounts and charges."

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[8] Section 673 of Title 31 prohibits the payment of any public moneys or any appropriations for the expenses of any "commission, council, board, or other similar body," or of any members thereof "unless the creation of the same shall be or shall have been authorized by law"; nor shall personal services be employed "from any executive department or other Government establishment in connection with any such" body.

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[9] See Footnote 2.

to law, to protect from unauthorized disclosure.[4] While the authority of the Administrator of General Services to delegate and the overall control placed in the President and the Bureau of the Budget are not the exact relief requested by the Deputy Director, these provisions were included to meet the special security responsibilities of CIA and other agencies.

[4] *Ibid.*, p. 66.

CLASSIFICATION ACT OF 1949

(63 Stat. 954, P.L. 81-429, October 28, 1949, 5 U.S.C.A. 5101 et seq.)

The Classification Act of 1949 is the basic statutory authority for the system by which most regular civilian positions in the Government are classified and their rates of compensation set. It established the General Schedule (GS) of civilian positions (including GS-16, GS-17 and GS-18 positions), and the Crafts, Protective and Custodial Schedule (CPC) (subsequently abolished), and set the rates of pay therefor. A number of other basic requirements for personnel management and compensation also derive from the Act. Step increases in pay and appointment at the minimum rate of the position grade were provided. Efficiency rating systems[1] and a system for a management improvement plan and for efficiency awards were prescribed.

Except for those provisions of the Act which amend or repeal various laws and parts of laws,[2] the Act does not apply to CIA.[3] Nor does the Act apply to "employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations" and similarly skilled employees.[4]

CIA positions are established and rates of compensation are set by the Director under authority of section 8 of the CIA Act. As a matter of policy, the several Directors have elected to adhere generally to the Classification Act in these regards. See a memorandum of 8 October 1962, "Classification Act Salary Administration," by Acting Director Marshall S. Carter (quoted in part in 44 Comp. Gen. 89; see PART VIII, page 198), which provided:

> 1. This memorandum will serve to reaffirm the existing policy that the Agency . . . will adhere to the compen-

[1] That portion of the Classification Act of 1949 which established the efficiency rating system (Title IX) was repealed and replaced by the Performance Rating Act of 1950. Notwithstanding that CIA was exempt from the Classification Act (see paragraph 2 of the narrative above), the Performance Rating Act contained no such exemption until an amendment was enacted for that purpose in 1954. See page 125 of this PART.

[2] See Title XII of the Classification Act of 1949.

[3] 5 U.S.C.A. 5102(a)(1)(vi).

[4] 5 U.S.C.A. 5102(c)(7).

> sation schedules and other provisions of the Classification Act of 1949, as amended, and as it may be amended hereafter, for all staff personnel of the Agency. . . .
>
> 2. Revision of the general compensation schedule, provisions for initial adjustment of salaries to such revised schedules, and other changes in the Classification Act will be given effect in the future by the Central Intelligence Agency whenever the law is amended. The effective date of such revisions and changes will be in accordance with the provisions of law making such changes.

Thus, the Agency utilizes the GS schedule for civilian positions and applies the compensation rates, established from time to time by statute or executive order and applicable to Government employees generally.

Pay rates for GS positions established by the Classification Act have been adjusted by statute and executive order a number of times since 1949, most recently by the Federal Employees Salary Act of 1970[5] and Executive Order 11524, April 15, 1970.[6] Under that Act the pay adjustments "shall become effective on the first day of the first pay period which begins on or after December 27, 1969," and pay rates for Government employees "whose rates of pay are fixed by administrative action pursuant to law . . . are hereby authorized to be increased" with the same retroactive effect. In any event the Comptroller General, in the opinion mentioned above (44 Comp. Gen. 89), held that because the Acting Director's policy decision as set forth in his 1962 memorandum was written prior to the effective date of a retroactive legislative salary increase enacted in 1964 which was applicable to certain employees (including Classification Act employees), that increase also was applicable, with retroactive effect, to the employees of CIA. The effect of that decision for the future therefore is that if retroactive pay increases for Classification Act employees are enacted at any time by legislation which does not include retroactive authority similar to that provided by the Federal Employees Salary Act of 1970, those retroactive increases nevertheless will be applicable to CIA employees in accordance with the 1962 memorandum.

[5] P.L. 91-231, April 15, 1970.

[6] 35 Fed. Reg. 6247.

The Agency also compensates employees in certain scientific and professional positions at the rates established for positions of those types by section 1001 of the Federal Salary Reform Act of 1962,[7] namely rates ranging between the minimum rate established for grade GS-16 and the highest for GS-18.

The Director and Deputy Director are compensated at rates set for Levels II and III of the Federal Executive Salary Schedule in accordance with the Federal Executive Salary Act of 1964[8] and the Federal Salary Act of 1967.[9] See Footnote 16 of PART I. Certain other positions, the number of which is approved by the Bureau of the Budget (now the Office of Management and Budget), are compensated at rates set for Levels IV and V under those statutes.

One exception from the statement above that CIA positions are established and rates of compensation are set by the Director under the authority of section 8 of the CIA Act exists with respect to the so-called wage board positions—the trades, crafts and manual labor positions excluded from the Classification Act. Under section 5341 of Title 5 of the United States Code, the pay of such employees "shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates."

Section 308 of the Federal Executive Salary Act of 1964 prohibits agencies which establish compensation rates by administrative action from fixing any such rates in excess of the highest rate of grade GS-18. When this legislation was pending, it was thought that section might be construed to limit the Director's authority under section 8 of the CIA Act to set pay rates for Agency employees. In order to be certain on this point, a sentence was added whereby the prohibition therein "does not impair the authorities provided by" the CIA Act of 1949, as amended.[10]

[7] 76 Stat. 841, P.L. 87-793, October 11, 1962, 5 U.S.C.A. 5361.

[8] 78 Stat. 415, P.L. 88-426, August 14, 1964, 5 U.S.C.A., Chapter 53, Subchapter II.

[9] 81 Stat. 624, P.L. 90-206, December 16, 1967, 2 U.S.C.A. 351-361.

[10] 5 U.S.C.A. 5363.

construction of such headquarters installation at said research station will not be commenced or continued, said amount of $8,500,000, or the remainder thereof, shall no longer be available for obligation: [6] *Provided further,* That at such time as the Central Intelligence Agency occupies the headquarters installation authorized by this title, the Administrator of General Services is authorized and directed to accomplish the demolition and removal of temporary Government building space in the District of Columbia of equivalent occupancy to that relinquished by the Central Intelligence Agency.[7]

TITLE V

General Provisions

SEC. 501 . . . . the Director of Central Intelligence is authorized to proceed with the establishment of a Central Intelligence Agency Headquarters Installation as authorized by title IV of this Act, without regard to the provisions of sections 1136,[8] 3648,[9] and 3734,[10] as respectively amended, of the Revised Statutes, and prior

[6] See Footnotes 4 and 5. If the Director had selected a location other than the one he did select—the present site of the installation—the $8,500,000 authorized for transfer to the National Planning Commission and the Department of the Interior for acquisition of land for and construction to extend the George Washington Memorial Parkway to the site of the Bureau of Public Roads at Langley would not have been available for that purpose.

[7] Many of the temporary buildings occupied by the Agency in the District of Columbia prior to occupancy of the headquarters installation in fact now have been demolished, although, as the statute language indicates, it was not required that the temporary building space to be demolished and removed be space which had been occupied by the Central Intelligence Agency.

[8] Section 1136, codified at 10 U.S.C.A. 4774, 9774, places maximum limitations on net floor area for each unit of family quarters constructed. Since the construction intended for CIA did not include the construction of quarters, this provision had no practical application to CIA. The provision was included to apply to construction authorized by the Act, but not by any of the provisions which are applicable to CIA.

[9] Section 3648, codified at 31 U.S.C.A. 529, prohibits advances of public money unless authorized by the appropriation concerned or other law.

[10] Section 3734 prohibited contracts and payments for any site for a public building in excess of the amount specifically appropriated therefor. The section also prohibited expenditures on any public building until after the General Services Administration prepares tentative sketch plans and estimates of costs and the plans and estimates are approved by the agency which is to occupy the building. The section was repealed in 1959 (73 Stat. 479, P.L. 86-249, September 9).

to approval of title to underlying land, as provided by section 355,[11] as amended, of the Revised Statutes. . . . The authority to establish or develop such installations and facilities shall include, in respect of those installations and facilities as to which family housing or the acquisition of land is specified in titles . . . and IV of this Act, authority to make surveys and to acquire lands and rights and interests thereto or therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent or temporary improvements thereon whether such lands are held in fee or under lease or under other temporary tenure.

SEC. 502. There are hereby authorized to be appropriated such sums of money as may be necessary to accomplish the purposes of this Act, but not to exceed—

(4) for public works authorized by title IV: $54,500,000.[12]

SEC. 504. Appropriations made to carry out the purposes of this Act shall be available for expenses incident to construction, including surveys, administration, overhead, planning, and supervision.

[11] Section 355, codified at 33 U.S.C.A. 733, prohibits the expenditure of public money "upon any site or land purchased by the United States for the purpose of erecting thereon any . . . public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title."

[12] The sums authorized to be appropriated were appropriated (see pages 131 and 133 of this PART) and have been expended for the land and facilities specified in Footnote 3.

Government having responsibilities in the field of intelligence, which disclosure has been made a matter of record in the files of such agency, and concerning whom a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security;

(d) whose knowledge of, or receipt of instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, is a matter of record in the files of an agency of the United States Government having responsibilities in the field of intelligence and concerning whom a written determination is made by the Attorney General or the Director of Central Intelligence, based on all information available, that registration would not be in the interest of national security;

FREEDOM OF INFORMATION ACT[1]

(81 Stat. 54, P.L. 90-23, June 5, 1967, 5 U.S.C.A. 552)[2]

The Freedom of Information Act provides: [3]

> (1) Each agency shall separately state and currently publish in the Federal Register [4] for the guidance of the public—
>
> (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
>
> (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
>
> (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
>
> (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
>
> (E) each amendment, revision, or repeal of the foregoing.

In addition, "each agency, on request for identifiable records made in accordance with published rules [5] stating the time, place and fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person." United States district courts are empowered to, on complaint, "enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." In such cases "the court shall determine the matter de novo and the burden is on the agency to sustain its action." Further,

Executive Order 10450, as amended
SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

(3 C.F.R., 1949-1953 Comp., p. 936, April 27, 1953)[1]

A 1950 statute[2] authorizes the head of certain specified departments and agencies, *not* including the National Security Council or the Central Intelligence Agency, to suspend an employee without pay and to terminate his employment in the interests of national security. Notwithstanding the provision of 5 U.S.C.A. 7501[3] or of any other law, such department and agency heads "may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension." Within 30 days of being so notified, the employee is entitled to submit "statements or affidavits to show why he should be restored to duty." Subject to certain prescribed procedural requirements and "after such investigation and review as he considers necessary" the agency head may remove the suspended employee whenever "he determines that removal is necessary or advisable in the interests of national security."[4]

The Act shall apply also to "such other agency of the Government of the United States as the President designates in the best interests

[1] Executive Order 10450 has been amended four times, all within the first year and a half of the Order's issuance: E.O. 10491, 3 C.F.R., 1949-1953 Comp., p. 973, October 13, 1953; E.O. 10531, 3 C.F.R., 1954-1958 Comp., p. 193, May 27, 1954; E.O. 10548, 3 C.F.R., 1954-1958 Comp., p. 200, August 2, 1954; E.O. 10550, 3 C.F.R., 1954-1958 Comp., p. 200, August 5, 1954. The amended Order is published as a note to 5 U.S.C.A. 7311.

[2] 64 Stat. 476, P.L. 81-733, August 26, 1950, 5 U.S.C.A. 7531, 7532.

[3] Section 7501 of Title 5 provides that individuals in the competitive services may be removed or suspended without pay "only for such cause as will promote the efficiency of the service" and establishes procedures for such actions. CIA employees are not in the competitive service. See Footnote 18, PART I.

[4] 5 U.S.C.A. 7532.

of national security." [5] A 1953 Executive Order, No. 10450, so designated, in addition to those specified in the Act [6] and in Executive Order 10237,[7] "all other departments and agencies of the Government."

The Order accomplished another far-reaching action—it established a security clearance program for Government employees. Under the Order each agency head is to establish and maintain an effective program to insure that the "employment and retention in employment" of any individual is "clearly consistent with the interests of national security." [8] The appointment of every employee of the Government "shall be made subject to investigation", the scope of the investigation to be determined by the degree of adverse effect on the national security the holder of the position could cause. If the holder could cause a "material" adverse effect, the position is a "sensitive" position and the investigation required is a "full field investigation". (All CIA positions have been designated as sensitive positions.) For all other positions the investigation required is at least a national agency check and "written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended". But the "Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States." [9] When information which indicates that retention in employment of any employee may not be clearly consistent with the interests of the national security, the matter is to be investigated and the employee is subject to suspension and termination.[10]

Investigations under the Order are to be designed to develop information as to whether the employment or retention in em-

[5] 5 U.S.C.A. 7531 (9).

[6] 5 U.S.C.A. 7531.

[7] Executive Order 10237 (3 C.F.R., 1949-1953 Comp., p. 748, April 27, 1951) had designated The Panama Canal and the Panama Railroad Company.

[8] E.O. 10450, section 2.

[9] *Ibid.*, section 3.

[10] *Ibid.*, sections 5 and 6.

ployment of the individual is clearly consistent with the interests of the national security. The Order then specifies the information to be developed, which essentially is any information concerning the individual's loyalty, security or suitability for employment, including information as to character, habits, morals, associations and reputation.[11] The breadth of the information to be developed is clear that agency heads are to take into account information which pertains to matters additional to those which would indicate disloyalty, treason, espionage or other action patently contrary to the security interests of the United States. The Order means that the character, habits, morals, associations and reputation of a person unquestionably loyal to the United States and who has not committed treason or espionage against the United States, nevertheless could be the basis for a determination that his employment or continued employment is contrary to the security interests of the United States.

Under section 8(b) of the Order, the investigation of persons primarily is the responsibility of the Civil Service Commission "except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission." In accordance with this provision, the CIA conducts its own investigations.

The Civil Service Commission in October 1968 issued minimum standards for those agencies whose investigations under Executive Order 10450 are also subject to the Commission's procedures for the use of the polygraph. It is of interest that the Commission uses the sensitivity of the CIA intelligence mission as a standard in determining which agencies may use the polygraph.[12]

> An executive department or agency which has a highly sensitive intelligence or counter-intelligence mission directly affecting the national security (e.g., a mission approaching the sensitivity of that of the Central Intelligence Agency) may use the polygraph for employment screening and personnel investigation of applicants for appointment to competitive service positions . . . .

[11] *Ibid.*, section 8.

[12] Federal Personnel Manual, Chapter 736, Appendix D.

As a matter of policy, the agency adheres to the procedures prescribed by the Civil Service Commission.

Notwithstanding that the 1950 statute and Executive Order 10450 authorize termination of employment "in the interests of national security," such authority in no way diminishes or affects the authority of the Director under section 102(c) of the National Security Act to terminate employment "whenever he deems such termination necessary or advisable in the interests of the United States." The latter, it will be noted, is in broader terms and requires no procedural steps. As such it is the more useful authority by which the Director may discharge his responsibility under section 102(d)(3) of the National Security Act to protect intelligence sources and methods from unauthorized disclosure. As a matter of policy, the Agency terminates the employment of individuals only under the authority of section 102(d) of the National Security Act, and Executive Order 10450 is not utilized for the purpose. Also as a matter of policy, Agency regulations provide procedural safeguards in all termination actions except any in which the Director deems it necessary or advisable in the interests of the United States not to apply such procedures.

III
Nat.
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PART III

Executive Order 10431
NATIONAL SECURITY MEDAL

TRANSMITTAL SHEET #3—Guide to Central Intelligence Agency Statutes and Law

With this dissemination, we begin an updating and revision of the *Guide*. Statutes, Executive orders and other materials originating subsequent to our most recent dissemination (July 1971) are to be added. Major changes instituted and planned for this and subsequent revisions and disseminations include:

(a) We intend a new PART, in the near future, to report significant court cases in which CIA was a party or was specially affected.

(b) Indices are to be improved and expanded. It has been apparent that the usefulness of the *Guide* is limited by the fact that much of the material and comments are in the Footnotes. The improved indices should assist the user to know what is in the *Guide* and where it is.

(c) Because so much of the *Guide* is in Footnotes, a different typeface is used for the Footnotes, again for the purpose of increasing readability and usefulness.

Transmitted with this SHEET is a revision of PART V, which is the Central Intelligence Agency Retirement Act of 1964 for Certain Employees. This updates that Act by including the two 1973 amendments. The INDEX also has been completely revised and expanded, keyed to substance.

We are disseminating this material on the basis of our most current list, which, however, is out of date by reason of reorganizations and retirements and perhaps for other reasons. Please let us have an update of component requirements. For accuracy of our records, requirements should be addressed to us in writing. Additional copies of the *Guide*, as well as copies of this dissemination, are available. We again invite comments and suggestions and we particularly request that errors be brought to our attention. For these purposes, please contact Richard H. Lansdale, Associate General Counsel (x7521).

August 1975

FILING INSTRUCTIONS

Remove the INDEX page and all other pages of PART V (pages 73-105) and insert in their stead pages V-i through V-iv and pages 101 through 140, all dated August 1975.

Since this Transmittal Sheet contains information on how to use the *Guide* and other explanatory comment, as well as filing instructions, this Sheet, or a copy of it, should be circulated to users of the Guide.

John S. Warner

JOHN S. WARNER
General Counsel

August 1975

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INDEX—Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1964 FOR CERTAIN EMPLOYEES, as amended [1]

[78 Stat. 1043, P.L. 88-643, October 13, 1964, 50 U.S.C.A. 403 Note;[2]
82 Stat. 902, P.L. 90-539, September 30, 1968;[3]
83 Stat. 847, P.L. 91-185, December 30, 1969;[4]
84 Stat. 1872, P.L. 91-626, December 31, 1970;[5]
87 Stat. 65, P.L. 93-31, May 8, 1973;[6]
87 Stat. 908, P.L. 93-210, December 28, 1973 [7]]

AN ACT

To provide for the establishment and maintenance of a Central Intelligence Agency Retirement and Disability System for a limited number of employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TITLE AND DEFINITIONS

PART A—TITLE

SECTION 101. This Act may be cited as the "Central Intelligence Agency Retirement Act of 1964 for Certain Employees."

PART B—DEFINITIONS

SEC. 111. When used in this Act, the term—

(1) "Agency" means the Central Intelligence Agency;

(2) "Director" means the Director of Central Intelligence; and

(3) "Qualifying service" means service performed as a participant in the system or, in the case of service prior to designation, service determined by the Director to have been performed in carrying out duties described in section 203.

TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A—ESTABLISHMENT OF SYSTEM

Rules and Regulations

SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency Retirement and Disability System for a limited num-

ber of employees, referred to hereafter as the system; such rules and regulations to become effective after approval by the chairman and ranking minority members of the Armed Services Committees of the House and Senate.[8]

(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

(c) In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403(d)(3)), that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of the Administrative Procedure Act (5 U.S.C. 1001 [now 511] et seq.)[9] or any other provisions of law, any determinations by the Director authorized by the provisions of this Act shall be deemed to be final and conclusive and not subject to review by any court.[10]

Establishment and Maintenance of Fund

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency Retirement and Disability Fund which shall be maintained by the Director. The Central Intelligence Agency Retirement and Disability Fund is referred to hereafter as the fund.

Participants

SEC. 203. The Director may designate from time to time such Agency officers and employees whose duties are determined by the Director to be (i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment, hereafter referred to as participants, who shall be entitled to the benefits of the system. Any participant who has completed fifteen years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the system may elect to remain a participant of such system for the duration of his employment by the Agency and such election shall not be subject to review or approval by the Director.

Annuitants

SEC. 204. (a) Annuitants shall be participants who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this Act the term—

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or is the mother of issue by marriage to the participant.

(2) "Dependent widower"[11] means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by marriage to the participant, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

(3) "Child," for the purposes of section 221 and 232 of this Act, means an unmarried child, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the participant in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support, or such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational insitute, junior college, college, university, or comparable recognized educational insitution. A child whose twenty-second birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly pursuing such a course of study or training, shall be deemed for the purposes of this paragraph and section 221(e) of this Act to have attained the age of twenty-two on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim

does not exceed five months and if he shows to the satisfaction of the Director that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim. The term "child," for purposes of section 241, shall include an adopted child and a natural child, but shall not include a stepchild.[12]

PART B—COMPULSORY CONTRIBUTIONS

SEC. 211. (a) Seven per centum [13] of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund shall be deposited by the Agency to the credit of the fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

PART C—COMPUTATION OF ANNUITIES

SEC. 221. (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest three consecutive years of service (or, in the case of an annuity computed under section 232 and based on less than three years, over the total service),[14] for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251 and 252. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death or upon remarriage prior to attaining age sixty of such surviving wife or husband.[15] The annuity payable to the surviving wife or husband after such participant's death shall be 55 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to $3,600 he specified as the base for the survivor benefit plus 10 per centum of any amount over $3,600 so specified.

(c)(1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) 60 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) $900; or (iii) $2,700 divided by the number of children.

(2) If an annuitant dies and is not survived by wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) 75 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) $1,080; or (iii) $3,240 divided by the number of children.[16]

(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

(e) The commencing date of an annuity payable to a child under paragraph (c) or (d) of this section, or (c) or (d) of section 232, shall be deemed to be the day after the annuitant or participant dies, with payment beginning on that day or beginning or resuming on the first day of the month in which the child later becomes or again becomes a student as described in section 204(b)(3), provided the lump-sum credit, if paid, is returned to the fund. Such annuity shall terminate on the last day of the month before (1) the child's attaining age eighteen unless he is then a student as described

or incapable of self-support, (2) his becoming capable of self-support after attaining age eighteen unless he is then such a student, (3) his attaining age twenty-two if he is then such a student and not incapable of self-support, (4) his ceasing to be such a student after attaining age eighteen unless he is then incapable of self-support, (5) his marrage, or (6) his death, which ever first occurs.[17]

(f) Any unmarried participant retiring under the provisions of this Act and found by the Director to be in good health may at the time of retirement elect a reduced annuity, in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest (as that term is used in section 9(h) of the Civil Service Retirement Act (5 U.S.C. 2259(h) [now 8339(j)])[18] in the participant to receive an annuity after the participant's death. The annuity payable to the participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section, and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the participant, but such total reduction shall not exceed 40 per centum. The annuity of a survivor designated under this paragraph shall be 55 per centum of the reduced annuity computed as prescribed above.[19]

(g) In the case of remarriage on or after age sixty an annuity shall be payable if remarriage has occurred on or after July 18, 1966, and if the surviving wife or husband, immediately before such remarriage, was receiving an annuity from the Central Intelligence Agency Retirement and Disability Fund. The annuity of a surviving spouse terminated as a result of remarriage which occurred prior to age sixty and on or after July 18, 1966, shall be restored at the same rate commencing on the date the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the fund.

No annuity shall be paid by reason of this paragraph for any period prior to October 20, 1969. No annuity shall be terminated solely by reason of the enactment of this paragraph.[20]

(h) In computing an annuity under this section the service credit of a participant who retires, except under section 231, on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by paragraph (a) the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average basic salary or annuity eligibility. The contribution specified in section 252 shall not be required for days of unused sick leave credited under this paragraph.[21]

(i) Except as otherwise provided, the annuity of a participant shall commence on the day after separation from the service, or on the day after salary ceases and the participant meets the service and the age or disability requirements for title thereto. The annuity of a participant under section 234 shall commence on the day after the occurrence of the event in which payment thereof is based. An annuity otherwise payable from the fund allowed on or after date of enactment of this provision shall commence on the day after the occurrence of the event on which payment thereof is based.[22]

(j) An annuity payable from the fund on or after date of enactment of this provision shall terminate (1) in the case of a retired participant, on the day death or any other terminating event occurs, or (2) in the case of a survivor, on the last day of the month before death or any other terminating event occurs.[23]

(k) The annuity computed under this section is reduced by 10 per centum of a special contribution described by section 252(b) remaining unpaid for civilian service for which retirement deductions have not been made, unless the participant elects to eliminate the service involved for the purpose of annuity computation.[24]

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

Retirement for Disability or Incapacity—Medical Examination—Recovery

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a)(2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon

order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant is under sixty and has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and age sixty.[25]

(b) In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade as provided in section 235. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of this disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the

meaning of paragraphs (a) and (b) of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 [now 8101] et seq.),[26] covering the same period of time. This provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any participant to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1916, as amended, by reason of the death of any other person.

(e) Notwithstanding any provision of law to the contrary,[27] the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 764 [now 8135]),[28] except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal employees' compensation fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secertary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

Death in Service

SEC. 232. (a) In case a participant dies and no claim for annuity is payable under the provisions of this Act, his contributions to the fund, with interest at the rates prescribed in sections 241(a) and 281(a), shall be paid in the order of precedence shown in section 241(b).

(b) If a participant, who has at least eighteen months [29] of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a widow or a dependent widower,[30] as defined in section 204, such widow or dependent widower shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with the provisions of section 221(a), except that the computation of the annuity of the participant under such section shall be at least the smaller of (i) 40 per centum of the participant's average basic salary, or (ii) the sum obtained under such section after increasing the participant's service of the type last performed by the difference between his age at the time of death and age sixty.[31] The annuity of such widow or dependent widower shall commence on the date following death of the participant and shall terminate upon death or upon remarriage prior to attaining age sixty of the widow or dependent widower (subject to the payment and restoration provisions of section 221(g)),[32] or upon the dependent widower's becoming capable of self-support.

(c) If a participant who has at least eighteen months [33] of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(1). The child's annuity shall begin and be terminated in accordance with the provisions of section 221(e). Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though such wife or husband or child had not survived the participant.

(d) If a participant who has at least eighteen months [34] of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(2). The child's annuity shall begin and terminate in accordance with the provisions of section 221(e). Upon termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though that child had never been entitled to the benefit.

Voluntary Retirement

SEC. 233. Any participant in the system who is at least fifty years of age and has rendered twenty years of service may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221 provided he has not less than ten years of service with the Agency of which at least five shall have been qualifying service.

Discontinued Service Benefits

SEC. 234. (a) Any participant who separates from the Agency after having performed not less than five years of service with the Agency, may, upon separation from the Agency or at any time prior to becoming eligible for an annuity, elect to have his contributions to the fund returned to him in accordance with the provisions of section 241, or (except in cases where the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States) to leave his contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at the age of sixty-two years.

(b) If a participant who has qualified in accordance with the provisions of paragraph (a) of this section to receive a deferred annuity commencing at the age of sixty-two dies before reaching the age of sixty-two his contributions to the fund, with interest, shall be paid in accordance with the provisions of sections 241 and 281.

Mandatory Retirement

SEC. 235. (a) The Director may in his discretion place in a retired status any participant who has completed at least twenty-five years of service, or who is at least fifty years of age and has completed at least twenty years of service, provided such participant has not less than ten years of service with the Agency of which at least five shall have been qualifying service. If so retired, such participant shall receive retirement benefits in accordance with the provisions of section 221.

(b) Any participant in the system receiving compensation at the rate of grade GS-18 or above shall be automatically separated from the Agency upon reaching the age of sixty-five. Any participant in the system receiving compensation at a rate less than grade GS-18 shall be automatically separated from the Agency upon reaching the age of sixty. Such separation shall be effective on the last day of the month in which a participant reaches the age sixty or sixty-five, as specified in this section, but whenever the Director shall determine it to be in the public interest, he may extend such participant's service for a period not to exceed five years. A participant separated under the provisions of this section who has completed five years of Agency service shall receive retirement benefits in accordance with the provisions of section 221 of this Act.

Limitation on Number of Retirements

SEC. 236. The number of participants retiring on an annuity pursuant to sections 233, 234, and 235 of this Act shall not exceed a total of four hundred during the period ending on June 30, 1969, nor a total of twenty-one hundred during the period beginning on July 1, 1969, and ending on June 30, 1974, nor a total of fifteen hundred during the period beginning on July 1, 1974, and ending on June 30, 1979.[35]

PART E—DISPOSITION OF CONTRIBUTIONS AND INTEREST IN EXCESS OF BENEFITS RECEIVED

SEC. 241. (a) Whenever a participant becomes separated from the Agency without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the total amount of contributions from his salary with interest thereon at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter compounded annually to December 31, 1956 (or, in the case of a participant separated from the Agency before

he has completed five years of service, to the date of separation) and proportionately for the period served during the year of separation including all contributions made during or for such period, except as provided in section 281, shall be returned to him.

(b) In the event that the total contributions of a retired participant, other than voluntary contributions made in accordance with the provisions of section 281, with interest at the rates provided in paragraph (a) of this section added thereto, exceed the total amount returned to such participant or to an annuitant claiming through him, in the form of annuities, the excess of the accumulated contributions over the accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries designated by such participant in writing to the Director;

(2) If there be no such beneficiary to the surviving wife or husband of such participant;

(3) If none of the above, to the child or children of such participant and descendants of deceased children by representation;

(4) If none of the above, to the parents of such participant or the survivor of them;

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant;

(6) If none of the above, to other next of kin of such participant as may be determined by the Director in his judgment to be legally entitled thereto.

(c) No payment shall be made pursuant to paragraph (b)(6) of this section until after the expiration of thirty days from the death of the retired participant or his surviving annuitant.

PART F—PERIOD OF SERVICE FOR ANNUITIES

Computation of Length of Service

SEC. 251. For the purposes of this Act, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar

year shall be excluded, except leaves of absence while receiving benefits under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 [now 8101] et seq.),[36] and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

Prior Service Credit

SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service—

(1) civilian service in the executive, judicial, and legislative branches of the Federal Government and in the District of Columbia government, prior to becoming a participant; and

(2) active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States prior to the date of the separation upon which title to annuity is based.

(b) A participant may obtain prior civilian service credit in accordance with the provisions of paragraph (a)(1) of this section by making a special contribution to the fund equal to the percentage of his basic annual salary for each year of service for which credit is sought specified with respect to such year in the table relating to employees contained in section 4(c) of the Civil Service Retirement Act (5 U.S.C. 2254(v) [now 8334(c)]),[37] together with interest computed as provided in section 4(e) of such Act (5 U.S.C. 2254(e) [now 8334(e)]).[38] Any such participant may, under such conditions as may be determined in each instance by the Director, pay such special contributions in installments.

(c)(1) If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, the Government's contributions (including interest accrued thereon computed at the rate of 3 per centum a year compounded annually) under such retirement system on behalf of the officer or employee shall be transferred to the fund and such officer or employee's total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to his credit in the fund effective as of the date such officer or employee becomes a participant in the system.[39] Each such officer or employee shall be deemed to consent to the

transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.[40]

(2) If a participant in the system becomes an employee under another Government retirement system by direct transfer to employment covered by such system, the Government's contributions (including interest accrued thereon computed at the rate of 3 per centum a year compounded annually) to the fund on his behalf shall be transferred to the fund of the other system and his total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to his credit in the fund of such other retirement system effective as of the date he becomes eligible to participate in such other retirement system.[41] Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the fund on account of service rendered prior to his becoming eligible for participation in such other system.[42]

(3) No participant, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c)(1) of this section, shall be required to make contributions in addition to those transferred for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such participant on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed for employees by section 4(c) of the Civil Service Retirement Act (5 U.S.C. 2254(c) [now 8334(c)][43] for contributions to the fund.[44]

(4) No participant, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c)(1) of this section, shall receive credit for periods of service for which a refund of contributions has been made, or for which no contributions were made to the other Government retirement fund. A participant may, however, obtain credit for such prior service by making a special contribution to the fund in accordance with the provisions of paragraph (b) of this section.[45]

(d) No participant may obtain prior civilian service credit toward retirement under the system for any period of civilian service on the basis of which he is receiving or will in the future

be entitled to receive any annuity under another retirement system covering civilian personnel of the Government.

(e) A participant may obtain prior military or naval service credit in accordance with the provisions of paragraph (a)(2) of this section by applying for it to the Director prior to retirement or separation from the Agency. However, in the case of a participant who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such retired pay is based shall not be included, except that in the case of a participant who is eligible for and receives retired pay on account of a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code),[46] or is awarded under chapter 67 of title 10 of the United States Code, the period of such military or naval service shall be included. No contributions to the fund shall be required in connection with military or naval service credited to a participant in accordance with the provisions of paragraph (a)(2) of this section.

(f) Notwithstanding any other provision of this section or section 253 any military service (other than military service covered by military leave with pay) performed by a participant after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this Act to such participant or to his widow[47] or child is to be based, if such participant or widow or child is entitled (or would upon proper application be entitled) at the time of such determination, to monthly old-age or survivors' benefits under section 202 of the Social Security Act, as amended (42 U.S.C. 402),[48] based on such participant's wages and self-employment income. If in the case of the participant or widow such military service is not excluded under the preceding sentence, but upon attaining age sixty-two, he or she becomes entitled (or would upon proper application be entitled) to such benefits, the aggregate period of service upon which such annuity is based shall be redetermined, effective as of the first day of the month in which he or she attains such age, so as to exclude such service.

(g) For the purpose of survivor annuity, special contributions authorized by paragraph (b) of this section may also be made by the survivor of a participant.[49]

Credit for Service While on Military Leave

SEC. 253. (a) A participant who, during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of this Act, as separated from his Agency position by reason of such military service, unless he shall apply for and receive a refund of contributions under this Act: *Provided,* That such participant shall not be considered as retaining his Agency position beyond December 31, 1956, or the expiration of five years of such military service, whichever is later.

(b) Contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

PART G—MONEYS

Estimate of Appropriations Needed

SEC. 261. The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

Investment of Moneys in the Fund

SEC. 262. The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such fund.

Attachment of Moneys

SEC. 263. None of the moneys mentioned in this Act shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process.

PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED, OR REAPPOINTED IN THE AGENCY, OR REEMPLOYED IN THE GOVERNMENT

Recall

SEC. 271. (a) The Director may, with the consent of any retired participant, recall such participant to duty in the Agency whenever he shall determine such recall is in the public interest.

(b) Any such participant recalled to duty in the Agency in accordance with the provisions of paragraph (a) of this section or reinstated or reappointed in accordance with the provisions of section 231(b) shall, while so serving, be entitled in lieu of his annuity to the full salary of the grade in which he is serving. During such service, he shall make contributions to the fund in accordance with the provisions of section 211. When he reverts to his retired status, his annuity shall be determined anew in accordance with the provisions of section 221.

Reemployment

SEC. 272. Notwithstanding any other provision of law,[50] a participant retired under the provisions of this Act shall not, by reason of his retired status, be barred from employment in Federal Government service in any appointive position for which he is qualified. An annuitant so reemployed shall serve at the will of the appointing officer.

Reemployment Compensation

SEC. 273. (a) Notwithstanding any other provision of law,[51] any annuitant who has retired under this Act and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis shall be entitled to receive his annuity payable under this Act, but there shall be deducted from his salary a sum equal to the annuity allocable to the period of actual employment.

(b) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed annuitant, or from any other moneys, including his annuity, payable in accordance with the provisions of this Act.

PART I—VOLUNTARY CONTRIBUTIONS

SEC. 281. (a) Any participant may, at his option and under such regulations as may be prescribed by the Director, deposit additional sums in multiples of 1 per centum of his basic salary, but not in excess of 10 per centum of such salary, which amounts together with interest at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of his retirement, including all contributions made during or for such period, shall, at the date of his retirement and at his election, be—

(1) returned to him in lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Director by the participant; or

(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Director by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in subparagraph (3) above.

(b) The benefits provided by subparagraph (2), (3), or (4) of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by subparagraph (a)(1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(c) In case a participant shall become separated from the Agency for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum, compounded as is provided in paragraph (a) of this section, made by him under the provisions of said paragraph (a) shall be refunded in the manner provided in section 241 for the return of contributions and interest in the case of death or separation from the Agency.

(d) Any benefits payable to a participant or to his beneficiary in respect to the additional deposits provided under this section shall be in addition to the benefits otherwise provided under this Act.

PART J—COST-OF-LIVING ADJUSTMENT OF ANNUITIES

SEC. 291.[52] (a) On the basis of determinations made by the Director pertaining to per centum change in the price index, the following adjustments shall be made:

(1) Each annuity payable from the fund on January 1, 1967, shall be increased on that date by (a) 12.4 per centum for annuities which commence on or before January 1, 1966, or (b) 4.9 per centum for annuities which commence on or between January 2, 1966, and January 1, 1967.

(2) Each month beginning with November 1966, the Director shall determine the per centum change in the price index. Effective the first day of the third month which begins after the price index shall have equaled a rise of at least 3 per centum for three consecutive months over the price index for the base month, each annuity payable from the fund which has a commencing date not later than such effective date shall be increased by 1 per centum plus [53] the per centum rise in the price index (calculated on the highest level of the price index during the three consecutive months) adjusted to the nearest one-tenth of 1 per centum.

(b) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) An annuity (except a discontinued service benefit under section 234(a)) which—

(i) is payable from the fund to a participant who retires, or to the widow or widower of a deceased participant; and

(ii) has a commencing date after the effective date of the then last preceding annuity increase under section 291(a);

shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under section 291(a) In the administration of this paragraph, a participant or deceased participant shall be deemed, for the purposes of section 221(h), to have to his credit, on the effective date of the then last preceding annuity increase under section 291(a), a number of days of unused sick leave equal to the number of days of unused sick leave to his credit on the date of his separation from the Agency.[54]

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 221(c)), which annuity commences the day after annuitant's death and after January 1, 1967, shall be increased by the total per centum increase the annuitant was receiving under this section at death; or if death occurred between January 1, 1967, and date of enactment, the per centum increase the annuitant would have received.

(3) For the purpose of computing the annuity of a child under section 221(c) that commences after October 31, 1969, the items $900, $1,080, $2,700, and $3,240 appearing in section 221(c) shall be increased by the total per centum increases allowed and in force under this section on or after such day, and, in case of a deceased annuitant, the items 60 per centum and 75 per centum appearing in section 221(c) shall be increased by the total per centum allowed and in force to the annuitant under this section on or after such day.[55]

(4) The annuity of each surviving child receiving an annuity under section 221 immediately prior to November 1, 1969, shall be recomputed effective November 1, 1969, in accordance with paragraph (b)(2). No increase allowed and in force prior to such date under section 291 shall be included in the recomputation of any such annuity, and this paragraph shall not operate to reduce any annuity.[56]

(c) Any annuity increased under this section shall be decreased by the amount of increase in force and effect with respect to that annuity under section 291 prior to the date of enactment of this subsection.

(d) The term "price index" shall mean the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. The term "base month" shall mean the month of October 1966 for the first increase under section 291(a)(2) and thereafter the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase.

(e) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(f) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installment shall, after adjustment, reflect an increase of at least $1.

Approved October 13, 1964.

[1] The text of the Retirement Act as presented in the *Guide*, is the 1964 text modified by all amendments to date, five in number. Citations to the amendments are set out under the title of the Retirement Act at the top of page 101. The substance of the changes accomplished by the five amendments is as follows:

a. As enacted in 1964, the Act established an automatic increase in annuities based on increases in the cost-of-living. This feature of the Act was modeled on a corresponding provision of the Civil Service retirement system. Legislation liberalizing the latter was enacted in 1965 (79 Stat. 840, P.L. 89-205, September 27, 1965). The 1968 amendment established for the CIA retirement system the 1965 improvements in Civil Service benefits as follows:

i. As of January 1, 1967, annuities were increased in an amount which equals the increases in Civil Service annuities which had been made under the 1965 amendment to the Civil Service Retirement Act;

ii. Cost-of-living adjustments to annuities are made whenever the Consumer Price Index rises at least 3% over the base period for three months, rather than twelve months.

b. The Civil Service retirement system again was amended by legislation approved in October 1969, the McGee-Daniels Act (83 Stat. 136, P.L. 91-93, October 20, 1969). The 1969 amendment to the CIA Retirement Act was designed to provide for the CIA retirement system the benefits which the McGee-Daniels Act established for the Civil Service system, as follows:

i. Annuities are computed on the average of the high three, rather than high five, years of salary;

ii. The period of service upon which the computation of annuities is based includes sick leave accrued at the time of retirement;

iii. After November 1, 1969, the cost-of-living adjustment in annuities which is based on an increase in the Consumer Price Index (under the formula prescribed by the 1968 amendment), is to include an additional 1%;

iv. The annuity of a surviving spouse of an employee or annuitant ceases upon remarriage of the surviving spouse only if the remarriage occurs prior to the spouse's reaching sixty years of age;

v. The survivor annuity of a surviving spouse whose remarriage before reaching age sixty is dissolved, which ceased upon remarriage, is reinstated;

(Footnote 1—Continued)

vi. The fixed annuity for surviving children is increased;

vii. A formula for computing the minimum annuity payable to a surviving spouse whose entitlement to an annuity arises from death in service is established which increases the annuity payable to some such survivors;

viii. The surviving spouse of a participant who dies before separation or retirement is entitled to an annuity if the participant had at least eighteen months, rather than five years, of service;

ix. Contributions to the retirement fund, by the Agency and by the employee, are increased for each from 6½ to 7% of salary.

c. The 1970 amendment to the CIA Retirement Act accomplished certain improvements in benefits under the CIA retirement system, again modeled on features of the Civil Service retirement system, and enacted certain other needed changes, all effective December 31, 1970:

i. It is no longer required that a child receive more than one-half of his support from a participant in order to qualify for a survivor annuity or other payment under the Act;

ii. A student may continue to receive a survivor annuity until he reaches age twenty-two, rather than twenty-one;

iii. A child ceases to be a student if there is an interim of five, rather than four, months between his school years;

iv. Both a natural child and an adopted child, but not a stepchild, may receive lump sum payments in instances where no annuity is payable;

v. A survivor annuity is payable to a student who was not entitled to such an annuity at the date of death because he was not then a student, and to a student whose annuity earlier had ceased because the interim period between his school years was greater than that permitted for continuing existing annuities;

vi. Annuities commence the day after an individual enters a non-pay status, rather than the first day of the succeeding month;

vii. The dates on which annuities for retirees and survivors are to terminate are prescribed;

viii. An option is provided which permits credit for prior civilian service for which no deductions have been made, by reducing the resulting annuity by 10% of the unpaid amount;

ix. The ceiling on the number of persons who may be retired under certain provisions of the Act during the period July 1, 1969 through June 30, 1974 is increased from four hundred to eight hundred;

(Footnote 1—Continued)

x. When an individual transfers to the CIA retirement system from another Government retirement system, the Government's contributions to his credit in the other retirement fund are transferred to his credit in the CIA retirement fund;

xi. When an individual transfers from the CIA retirement system to another Government retirement system, both the Government's contributions to his credit in the CIA retirement fund and his own contributions are transferred to his credit in the other retirement fund;

xii. A survivor of a participant now may purchase retirement credit for prior civilian service under the same conditions by which a participant may do so.

d. The May 1973 amendment to the CIA Retirement Act increased the ceiling on the number of persons who may be retired under certain provisions of the Act during the period July 1, 1969 through June 30, 1974, from eight hundred to twenty-one hundred. The Amendment also established a quota of fifteen hundred retirees for the period July 1, 1974 through June 30, 1979.

e. In December 1973, the cost-of-living provision of the CIA Retirement Act was amended to guarantee retirees or survivors an annuity no less than what would have been paid had the individual been eligible to receive the last preceding cost-of-living increase. Previously, one had to be on the retirement rolls before the effective date of a cost-of-living increase to be eligible for that increase. This amendment corrected an anomaly whereby an employee or a survivor who went onto the retirement rolls after a cost-of-living increase received a smaller annuity than an employee retiring sooner, even though the former annuity was calculated with more service and a higher base salary. The amendment applies only to annuities which commence on or after July 2, 1973.

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[2] Legislative history materials include:

Hearings:

House Armed Services Subcommittee No. 1 Consideration of H.R. 7216, July 23, 1963 [No. 26];

House Armed Services Committee Consideration of H.R. 8427, September 24, 1963 [No. 27];

H.R. Rep. No. 88-763 (Committee on Armed Services), September 24, 1963;

Sen. Rep. No. 88-1589 (Committee on Armed Services), September 21, 1964;

(Footnote 2—Continued)

Congressional Record:
Vol. 109 (1963), October 30, p. 19587 (considered and passed House);
Vol. 110 (1964), September 25, October 1, pp. 22210, 22612 (considered, amended and passed Senate; House concurred in Senate amendment).

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[3] Legislative history materials include:
H.R. Rep. No. 90-1766 (Committee on Armed Services), July 22, 1968;
Sen. Rep. No. 90-1504 (Committee on Armed Services), September 6, 1968;
Congressional Record:
Vol. 114 (1968), July 25, September 18, pp. H 7485, S 11037 (considered and passed House, considered and passed Senate).

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[4] Legislative history materials include:
Hearings:
House Committee or Armed Services Consideration of H.R. 14571, November 18, 1969 [H.A.S.C. No. 91-31];
H.R. Rep. No. 91-654 (Committee on Armed Services), November 18, 1969;
Sen. Rep. No. 91-624 (Committee on Armed Services), December 19, 1969;
Congressional Record:
Vol. 115 (1969), December 1, 19, 22, pp. H 11479, S 17494, 5 (considered and passed House, considered and passed Senate).

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[5] Legislative history materials include:
Hearings:
House Committee on Armed Services Consideration of S. 4571, December 17, 1970 [H.A.S.C. No. 91-79];
Sen. Rep. No. 91-1419 (Committee on Armed Services), December 8, 1970;
H.R. Rep. No. 91-1771 (Committee on Armed Services), December 17, 1970;
Congressional Record:
Vol. 116 (1970), December 10, 21, 31, pp. S 19925, H 12198, H 12614 (considered and passed Senate, considered and passed House, revision and extension of remarks).

[6] Legislative history materials include:
Hearings:
House Committee on Armed Services Consideration of H.R. 6167, S. 1494, March 30, 1973;
Senate Committee on Armed Services Consideration of H.R. 6167, S. 1494, April 5, 1973;
House Committee on Armed Services Consideration of S. 1494, April 12, 1973;
Sen. Rep. No. 93-105 (Committee on Armed Services), April 5, 1973;
H.R. Rep. No. 93-134 (Committee on Armed Services), April 12, 1973;
Congressional Record:
Vol. 119 (1973), April 10, 30, pp. S 6860, H 3141 (considered and passed Senate, considered and passed House).

[7] Legislative history materials include:
Hearings:
House Special Subcommittee on Intelligence Consideration of S 2714, December 4, 1973 [H.A.S.C. No. 93-30];
House Committee on Armed Services Consideration of S 2714 December 11, 1973;
Sen. Rep. No. 93-517 (Committee on Armed Services), November 15, 1973;
H.R. Rep. No. 93-717 (Committee on Armed Services), December 12, 1973;
Congressional Record:
Vol. 119 (1973), December 18, pp. H 11673, S 23229, S 23267 (considered and passed House, considered and passed Senate).
Vol. 120 (1947), January 10, p. 51 (considered and signed by President).

[8] This requirement for prior approval of Agency regulations arose out of the security problems inherent in the effort to prescribe the employees to be covered by the new retirement system. At the time the bill was debated and passed by the Senate, Senator Stennis stated on the floor of the Senate that the employees to be covered would be only those determined by the Director "to be in support of Agency activities abroad, and hazardous to the life and health of the employee, or only those whose

(Footnote 8—Continued)

duties are so specialized, because of security requirements, to be clearly distinguishable from normal Government employment." One feature by which coverage would be determined, Senator Stennis pointed out, was the requirement "that the rules and regulations of the Director for establishing and maintaining the system would become effective only after approval by the chairmen and ranking minority members of the House and Senate Committees on Armed Services." (See Congressional Record Vol. 110, September 25, 1964, page 22214.) The point was emphasized also in a letter to the Director of the Bureau of the Budget, October 6, 1964, from Director John A. McCone. In recommending presidential approval of the bill, Mr. McCone wrote, with respect to the requirement for congressional approval of Agency regulations:

> It is recognized that language of this type has been considered to create serious legal difficulties, but I wish to point out that the intent and effect of this language is quite different from that of more common "come-into-agreement" clauses. The Committees, particularly the House Armed Services Committee, which considered this bill wished to have specific limitations on those employees of the Agency who could become participants of the retirement system. These limitations could have been spelled out in the bill, but the Committees recognized that this would pose serious security problems. In effect, we reached agreements with the Committees as to what the limitations would be and these will be reflected in our classified regulations. This provision is, therefore, intended merely to provide assurance to the Committees that the limitations and conditions previously agreed upon are included in our regulations.

The President, in approving the bill, indicated his objection to that provision, and the condition upon which he accepted it. The President considered the legislation as "fundamentally meritorious." But he also regarded the requirement for approval of Agency regulations by the congressional committee chairmen and ranking minority members as unconstitutional. He noted that four Attorneys General of the United States "have held that legislative provisions vesting in congressional committees the power to approve or disapprove actions of the executive branch are unconstitutional." He felt those conclusions were equally applicable to the provision in the proposed legislation, which vested such powers in *particular members* of congressional committees.

(Footnote 8—Continued)

> Such a provision attempts to confer executive powers on the members of the legislative branch, in violation of the constitutional principle of separation of powers.
>
> However, I recognize that the adoption of this objectionable provision is due in large part to the fact that the anticipated coverage of the retirement system, which was explained to the committees, cannot for security reasons be set forth in the bill. Accordingly, I shall treat this provision as a request for consultation with the named committee members, and shall ask the Director to comply with it on that basis. (*Public Papers of the Presidents of the United States, Lyndon B. Johnson (1963-64)*, Vol. II, p. 1336, item 664, October 14, 1964.)

Before approving the regulations prepared by the Agency, the Director submitted them to a panel of distinguished lawyers (Mortimer M. Caplin and Steuart L. Pittman of Washington, D.C., and Robert W. Wales of New York) for review. The purpose of the review, as the panel reported in a letter of February 11, 1965, to the Director,

> was to provide you with our independent judgment on whether those regulations are consistent not only with the express language of the statute but also with Congress' intent in enacting this special retirement system, as expressed in the hearings, in floor statements and in the committee reports. Administrative workability or clarity of the regulation was not within the ambit of our consideration.

The panel approved the regulations:

> In our opinion the proposed regulations, as revised, are consistent with the letter and the purpose of the legislation. They assure that only those employees who perform unique or hazardous services for their country will be permitted to participate. At the same time, they allow the flexibility needed by the Agency if this program is to be an effective management tool.
>
> We wish to compliment you and the members of your staff on the conscientious effort which the Agency has made to develop sound regulations which carefully carry out the intent of Congress.

Approval by the chairmen and ranking minority members of the Armed Services Committees of the House and Senate was received, on March 1, 1965, and April 27, 1965, respectively, and the Agency regu-

(Footnote 8--Continued)

lation issued under the authority of section 201 was effective April 27, 1965.

The Bureau of the Budget, in clearing the draft legislation, had requested that the Agency's regulations for the operation of the system and establishing the criteria for the selection of employees to be covered be submitted to the Bureau for approval. This was done and the Director of the Bureau, in a letter of March 3, 1965, informed the Director of Central Intelligence that the submitted regulations were acceptable to the Bureau.

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[9] The Administrative Procedure Act established specific procedures by which agencies are to arrive at a wide variety of administrative decisions, including certain decisions to grant or deny benefits. The Act also establishes a right to judicial review of these decisions, with certain exceptions.

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[10] Under sections 701 and 702 of Title 5 any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof," but such right of review shall not apply to the extent that "statutes preclude judicial review . . . or . . . agency action is committed to agency discretion by law." Notwithstanding sections 701 and 702, a person suffering legal wrong or aggrieved or adversely affected by a determination by the Director possibly could bring suit contending that the determination was not one "authorized by the provisions of this Act" and thus was not protected from the right to judicial review afforded by sections 701 and 702. Since evidence involving classified information, if introduced at trial, might jeopardize "the interests of the security of the foreign intelligence activities of the United States" and the ability of the Director to protect "intelligence sources and methods from unauthorized disclosure," it was considered necessary to provide, in section 201(c), that determinations by the Director under the Act "shall be deemed to be final and conclusive and not subject to review by any count."

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[11] As enacted in 1964, the Retirement Act set out requirements for widowers to qualify for benefits under the Act which were different from those established for widows. Both widows and widowers were required to meet certain marriage or parenthood requirements; but in addition, a widower was required to be incapable of self-support and must have received more than one-half of his support from his wife. A 1971 statute

(Footnote 11—Continued)

(85 Stat. 644, P.L. 92-187, 5 U.S.C.A. 7152) abolishes such discriminatory treatment of female Federal employees. Subsection 7152(c) of Title 5 provides that notwithstanding "any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family." The effect of the 1971 law thus is to remove the requirement in the Retirement Act that a widower, in order to qualify for benefits under the Act, must be incapable of self-support and must have received more than one-half of his support from his wife. Accordingly, where the term "dependent widower" appears in the Retirement Act (subsections 204(a), 204(b)(2), and 232(b)) it should be read as "widower" and subsection 204(b)(2) should be read:

> "(2) 'Widower' means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by marriage to the participant."

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[12] Paragraph (3) of section 204(b) was amended to the above language by the 1970 amendment (section 1). As enacted in 1964, the paragraph provided:

> (3) "Child", for the purposes of sections 221 and 232 of this Act, means an unmarried child, including (i) an adopted child, and (ii) a stepchild or recognized natural child who received more than one-half of his support from and lived with the participant in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support or such unmarried child between eighteen and twenty-one years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child whose twenty-first birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly pursuing such a course of study or training, shall be deemed for the purposes of this paragraph and section 221(e) of this Act to have attained the age of twenty-one on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim does not

(Footnote 12—Continued)

exceed four months and if he shows to the satisfaction of the Director that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

[13] As enacted in 1964 the figure was "Six and one-half per centum". It was amended to "Seven per centum" by the 1969 amendment (sections 1 and 6(a)), effective "at the beginning of the first applicable pay period beginning after December 31, 1969."

[14] The first sentence of paragraph (a) of section 221 was amended to the above language by the 1969 amendment (sections 2(a) and 6(b)), effective October 20, 1969. That amendment substituted the phrase "three consecutive years of service (or, in the case of annuity computed under section 232 and based on less than three years, over the total service)" for the phrase "five consecutive years of service".

Section 6(d) of the 1969 amendment provides that the amendments cited in this Footnote and in Footnotes 21, 25, 29, 31 "shall not apply in the cases of persons retired or otherwise separated prior to October 20, 1969, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted".

[15] The first sentence of section 221(b) was amended to the above language by the 1969 amendment (sections 2(b) and 6(b)), effective October 20, 1969. That amendment substituted the phrase "or upon remarriage prior to attaining age sixty of such surviving wife or husband" for the phrase "or remarriage of such surviving wife or husband".

[16] Subsection (c) of section 221 was amended to the above language by the 1969 amendment (sections 2(c) and 6(c)), effective November 1, 1969. That amendment substituted "60 per centum", "$900", "$2,700", "75 per centum", "$1,080", and "$3,240" for "40 per centum", "$600", "$1,800", "50 per centum", "$720", and "$2,160", respectively.

[17] Subsection (e) of section 221 was amended to the above language by the 1970 amendment (section 2). As enacted in 1964, subsection (e) read:

(e) The annuity payable to a child under paragraph (c) or (d) of this section shall begin on the day after the participant dies, and such annuity or any right thereto shall terminate on the last

(Footnote 17—Continued)

> day of the month before (1) his attaining age eighteen unless incapable of self-support, (2) his becoming capable of self-support after age eighteen, (3) his marriage, or (4) his death, except that the annuity of a child who is a student as described in section 204(b)(3) of this Act shall terminate on the last day of the month before (1) his marriage, (2) his death, (3) his ceasing to be such a student, or (4) his attaining age twenty-one.

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[18] Section 8339(j) of Title 5 uses the term "insurable interest" in a context similar to that in which it appears in section 221(f) of the CIA Retirement Act, and the term is not defined in section 8339(j) or elsewhere in Title 5. A definition adopted by the Civil Service Commission thus applies with respect to the term as it appears in section 8339(j) and would apply also as to section 221(f).

> If the person named [by an employee as having an insurable interest] can reasonably expect to receive some kind of financial benefit from the continuance of the life of the retiring employee, an insurable interest exists. Generally speaking, any near relative would have an insurable interest in the retiring employee. If a person other than a near relative is named, proof of an insurable interest may be required. ("Your Retirement System," Civil Service Commission Pamphlet 18, March 1971, p. 19.)

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[19] The last two sentences of subsection (f) of section 221, as enacted in 1964, which read as follows, were deleted by the 1970 amendment (section 3):

> The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.

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[20] Subsection (g) was added to section 221 by the 1969 amendment (sections 2(d) and 6(b)), effective October 20, 1969.

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[21] Subsection (h) was added to section 221 by the 1969 amendment (sections 2(e) and 6(b)), effective October 20, 1969. See also the second paragraph of Footnote 14.

[22] Subsection (i) of section 221 was added by the 1970 amendment (section 3).

[23] Subsection (j) of section 221 was added by the 1970 amendment (section 3).

[24] Subsection (k) of section 221 was added by the 1970 ammendment (section 3).

[25] 1969 amendment (sections 3 and 6(b)) amended section 231(a), effective October 20, 1969, by deleting from the last sentence, "but this provision shall not increase the annuity of any survivor". See also the second paragraph of Footnote 14.

[26] The Federal Employees' Compensation Act is a law to provide compensation for disability and death, medical care, and rehabilitation services for civilian employees and officers of the government who suffer injuries while in the performance of their duties or suffer diseases proximately caused by their employment. It is administered by the Bureau of Employees' Compensation of the Department of Labor.

[27] See Footnote 9.

[28] Section 8135 authorizes lump sum payments to discharge the government's liability under the Federal Employees' Compensation Act if (a) the monthly payments for which the lump sum payment would be substituted would be less than $5; (b) the beneficiary is or is about to become a nonresident of the United States; or (c) the Secretary of Labor determines that such payment would be in the best interest of the beneficiary.

[29] The 1969 amendment (sections 4(a)(1) and 6(b)) amended section 232(b), effective October 20, 1969, by deleting "five years" and inserting "eighteen months". See also the second paragraph of Footnote 14.

[30] For the reasons set out at Footnote 11, the term "dependent widower," in subsection 232(b), and throughout the Act, should be read "widower."

[31] The 1969 amendment (sections 4(a)(2) and 6(b)) additionally amended section 232(b), effective October 20, 1969, by adding that portion of the first sentence of the above subsection which follows the phrase "the provisions of section 221(a)". See also the second paragraph of Footnote 14.

[32] The 1969 amendment (sections 4(a)(3) and 6(b)) further amended section 232(b), effective October 20, 1969, by deleting the phrase "remarriage of the widow or dependent widower" and inserting "upon remarriage prior to attaining age sixty of the widow or dependent widower (subject to the payment and restoration provisions of section 221(g))".

[33] The 1969 amendment (sections 4(b) and 6(b)) amended section 232(c), effective October 20, 1969, by deleting "five years" and inserting "eighteen months".

[34] The 1969 amendment (sections 4(b) and 6(b)) amended section 232(d), effective October 20, 1969, by deleting "five years" and inserting "eighteen months".

[35] The 1970 amendment (section 4) amended section 236 by deleting the words "nor a total of four hundred" and substituting the words "nor a total of eight hundred". The 1973 amendment deleted "eight hundred", and substituted "twenty-one hundred", and added the words "nor a total of fifteen hundred during the period beginning on July 1, 1974, and ending on June 30, 1979."

[36] See Footnote 26 for brief explanation of the Federal Employees' Compensation Act.

[37] Section 8334(c) lists percentages of basic salary which an employee may contribute for the purchase of prior service credit as follows:

Service Period	*Percentage of Basic Pay*
August 1, 1920, to June 30, 1926	2½
July 1, 1926, to June 30, 1942	3½
July 1, 1942, to June 30, 1948	5
July 1, 1948, to October 31, 1956	6
November 1, 1956, to December 31, 1969	6½
After December 31, 1969	7

[38] Section 8334(e) provides that interest

> is computed from the mid-point of each service period included in the computation, or from the date refund was paid, to the date of deposit or commencing date of annuity, whichever is earlier. The interest is computed at the rate of 4 percent a year to December 31, 1947, and 3 percent a

(Footnote 38—Continued)

> year thereafter compounded annually. The deposit may be made in one or more installments. Interest may not be charged for a period of separation from the service which began before October 1, 1956.

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[39] Subsection 252(c), when enacted in 1964, provided that when a government employee under some other government retirement system becomes a participant in the Central Intelligence Agency system by direct transfer, the employee's contributions and deposits to his credit in the original retirement system are to be transferred to the CIA retirement fund. (The original subsection 252(c) is set out at Footnote 40.) An amendment in 1970 provided also for the transfer of the government's contributions under such retirement system on behalf of the employee. A question as to the retroactive applicability of the amendment was referred to the Comptroller General, who concluded that the amendment is to be applied retroactively (B-172983, September 15, 1971 (unpublished)). The Civil Service Commission accordingly was authorized to transfer to the Central Intelligence Agency retirement fund the sums on deposit with the Civil Service retirement system to the credit of employees who had transferred from that system to the Central Intelligence Agency retirement system. A corresponding transfer was authorized with respect to employees who had transferred from the CIA system to the Civil Service system.

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[40] Paragraph (1) of section 252(c) was amended to the above language by the 1970 amendment (section 5). As enacted in 1964, the paragraph provided:

> If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

[41] See Footnote 39.

[42] The 1970 amendment (section 5) inserted the above language as paragraph (2) of section 252(c). It also renumbered the original paragraph (2) of section 252(c) as paragraph (3).

[43] See Footnote 37 for rates set by section 8334(c).

[44] The above paragraph (3) of section 252(c) was paragraph (2) of the statute as it was enacted in 1964. See Footnote 42. Paragraph (3) as enacted in 1964 is now paragraph (4). See Footnote 45.

[45] The above paragraph (4) section 252(c) was paragraph (3) of the statute as it was enacted in 1964. The 1970 amendment (section 5) redesignated it as paragraph (4).

[46] Chapter 11 of Title 38, at section 301(2), defines the term "period of war", in the case of any veteran, as follows:

> (A) any period of service performed by him after November 11, 1918, and before July 2, 1921, if such veteran served in the active military, naval, or air service after April 5, 1917, and before November 12, 1918; and
>
> (B) any period of continuous service performed by him after December 31, 1946, and before July 26, 1947, if such period began before January 1, 1947.

[47] In view of 5 USC 7152(c) the term "widow", throughout subsection 252(f) means "widow" or "widower" as the case may be. See Footnote 14.

[48] Section 402 of Title 42 is the section which prescribes the individuals who are entitled to monthly old-age and survivors' benefits under the Social Security Act, as amended.

[49] Subsection (g) of section 252 was added to the statute by the 1970 amendment (section 6).

[50] See Footnote 9.

[51] See Footnote 9.

[52] Except as indicated at Footnotes 53, 54 and 55, section 291 was amended to the above language by the 1968 amendment. As enacted in 1964, section 291 provided:

> Section 291. (a) On the basis of determinations made by the Civil Service Commission pursuant to section 18 of the Civil Service Retirement Act, as amended, pertaining to per centum change in the price index, the following adjustments shall be made:
>
> (1) Effective April 1, 1966, if the change in the price index from 1964 to 1965 shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2, 1965, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.
>
> (2) Effective April 1 of any year other than 1966 after the price index change shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.
>
> (b) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:
>
> (1) Effective from the date of the first increase under this section, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 221(c)), which annuity commenced the day after the annuitant's death, shall be increased as provided in subsection (a)(1) or (a)(2) if the commencing date of annuity to the annuitant was earlier than January 2 of the year preceding the first increase.
>
> (2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 221(c)), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

(Footnote 52—Continued)

(3) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 221(c), the items $600, $720, $1,800, and $2,160 appearing in section 221(c) shall be increased by the total per centum increase allowed and in force under this section and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 221(c) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death. Effective from the date of the first increase under this section, the provisions of this paragraph shall apply as if such first increase were in effect with respect to computation of a child's annuity under section 221(c) which commenced between January 2 of the year preceding the first increase and the effective date of the first increase.

(c) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(d) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar.

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[53] The 1969 amendment (sections 5(a) and 6(c)) amended section 291(a)(2), as amended by the 1968 amendment (see Footnote 52), effective November 1, 1969, by inserting immediately following the words "shall be increased by", the words "1 per centum plus".

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[54] Section 291(b), as amended by the 1968 amendment (see Footnote 52), was amended to include the above language by the December 1973 amendment (Sec. 1(a) and (b)), effective January 10, 1974, which renumbered paragraph (1), (2), and (3) of Section 291(b) as paragraph (2), (3), and (4) respectively and by inserting the above new paragraph (1).

The amendments made by subsection (a) of PL 93-210 to section 291(b) of the CIA Retirement Act of 1964 for Certain Employees "shall apply only with respect to annuities which commence on or after July 2, 1973".

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[55] Paragraph (2) of section 291(b), as amended by the 1968 amendment (see Footnote 52), was amended to the above language by the 1969 amendment (sections 5(b) and 6(c)), effective November 1, 1969. The 1968 amendment, which the above language replaces, read:

(Footnote 55—Continued)

> Effective from its commencing date, an annuity payable from the fund to a child under section 221(c), which annuity commences the day after annuitant's death and after January 1, 1967, shall be increased by (a) 2 per centum if the annuity from which it is derived commenced on or before January 1, 1966, or (b) 1 per centum if the annuity from which it is derived commenced on or between January 2, 1966, and January 1, 1967.

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[56] Paragraph (3) of section 291(b), as amended by the 1968 amendment (see Footnote 52), was amended to the above language by the 1969 amendment (sections 5(b) and 6(c)), effective November 1, 1969. The 1968 amendment, which the above language replaces read:

> For the purposes of computing an annuity which commences after January 1, 1967, to a child under section 221(c), the items $600, $720, $1,300, and $2,160 appearing in section 221(c) shall be increased by 10.2 per centum plus the total per centum increase allowed and in force under section 291(a)(2) for employee annuities, and, in the case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 221(c) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death; or if death occurred between January 1, 1967, and date of enactment, the per centum increase the annuitant would have received.

Executive Order 10431
NATIONAL SECURITY MEDAL

(3 C.F.R., 1949-1953 Comp., p. 927, January 19, 1953)

Towards the end of his term as Director of Central Intelligence, General Bedell Smith had become convinced there was a need for a national intelligence medal to be created and awarded by the President.[1] Such form of recognition had existed briefly in the early years of this country. The Purple Heart had been established by General George Washington in 1782 to be awarded "whenever any singularly meritorious action is performed." [2] The third Purple Heart ever issued was in 1783 to a Sgt. Daniel Bissel for "having performed some important Services, within the immediate knowledge of the Commander in chief, in which the fidelity, perseverance and good Sense of the said Sergeant Bissel were conspicuously manifested," [3] an effort to obtain intelligence in New York City concerning enemy troop strength and intentions in the late summer of 1781. Awarding of the Purple Heart ceased with the closing of the War of the Revolution. It was revived in 1932 and, pursuant to executive order,[4] now is conferred for wounds sustained in action.

Several other factors contributed to General Smith's view. The establishment of the Agency by statute, with statutory responsibilities to the President and the National Security Council, had given recognition to intelligence as a major field of its own. General Smith referred to intelligence as a "fourth service," additional to the Army, Navy, and Air Force. Each of the latter had a special medal for recognition of outstanding achievement, but none existed for outstanding service in intelligence. Moreover, the justification for a special award was perhaps greater

[1] The background information in this PART concerning General Smith's views is taken from a letter to the Bureau of the Budget from the General Counsel, CIA, December 4, 1952, and related memoranda in the files of the Office of General Counsel, CIA.

[2] General Orders of the Continental Army for Wednesday, August 7, 1782.

[3] General Orders of the Continental Army for Sunday, June 8, 1783.

[4] Executive Order 11016, 3 C.F.R., 1959-1963 Comp., p. 596, April 25, 1962.

in intelligence, since the nature of such service, particularly if it involved clandestine intelligence gathering under hazardous or sensitive circumstances, prevented public recognition. An award was needed also to acknowledge the performance of persons drawn from academic or professional life to assist in intelligence, persons whose intellectual competence was essential to the intelligence function. To a considerable degree, stature for people in this category depended on the recognition by others of the quality of their work. While an award to such a person would not permit his peers to know what he had done, it would serve to inform the public that he had served his country ably and well in his chosen field. And finally, limitations on eligibility for other valued awards—eligibility limited to war-time service or to service outside the United States—prevented those awards from serving the desired purpose.

The Director accordingly sought the establishment by the President of a decoration, which in each instance would be awarded by the President or by a person designated by the President for that purpose, recognizing outstanding service in the field of intelligence. It was desired also that in establishing the award, there be no reference to CIA. Thus, when the National Security Medal was established by President Truman, by the issuance of Executive Order 10431 on January 19, 1953, for "distinguished achievement or outstanding contribution on or after July 26, 1947,[5] in the field of intelligence relating to the national security," CIA was not mentioned. The implementing regulations, also issued by the President on January 19, likewise make no reference to CIA. The Executive Order is set out below:

Executive Order 10431

NATIONAL SECURITY MEDAL

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. There is hereby established a medal to be known as the National Security Medal with accompanying ribbons and appurtenances. The medal and its appurtenances

[5] July 26, 1947, is the date of the enactment of the National Security Act of 1947. See also Footnote 32, PART I.

shall be of appropriate design, approved by the Executive Secretary of the National Security Council.

2. The National Security Medal may be awarded to any person, without regard to nationality, including members of the armed forces of the United States, for distinguished achievement or outstanding contribution on or after July 26, 1947, in the field of intelligence relating to the national security.

3. The decoration established by this order shall be awarded by the President of the United States or, under regulations approved by him, by such person or persons as he may designate.

4. No more than one National Security Medal shall be awarded to any one person, but for subsequent services justifying an award, a suitable device may be awarded to be worn with the Medal.

5. Members of the armed forces of the United States who are awarded the decoration established by this order are authorized to wear the medal and the ribbon symbolic of the award, as may be authorized by uniform regulations approved by the Secretary of Defense.

6. The decoration established by this order may be awarded posthumously.

HARRY S. TRUMAN

The White House,
January 19, 1953.

The implementing regulations follow: [6]

Regulations Governing the Award of the National Security Medal

Pursuant to Paragraph 2 of Executive Order 10431, the following regulations are hereby issued to govern the award of the National Security Medal:

1. The National Security Medal may be awarded to any person without regard to nationality, including a member of the Armed Forces of the United States, who, on or after 26 July 1947, has made an outstanding contribution to the

[6] 3 C.F.R., 1949-1953 Comp., p. 927, January 19, 1953.

National intelligence effort. This contribution may consist of either exceptionally meritorious service performed in a position of high responsibility or of an act of valor requiring personal courage of a high degree and complete disregard of personal safety.

2. The National Security Medal with accompanying ribbon and appurtenances, shall be of appropriate design to be approved by the Executive Secretary of the National Security Council.

3. The National Security Medal shall be awarded only by the President or his designee for that purpose.

4. Recommendations may be submitted to the Executive Secretary of the National Security Council by any individual having personal knowledge of the facts of the exceptionally meritorious conduct or act of valor of the candidate in the performance of outstanding services, either as an eyewitness or from the testimony of others who have personal knowledge or were eyewitnesses. Any recommendations shall be accompanied by complete documentation, including where necessary, certificates, affidavits or sworn transcripts of testimony. Each recommendation for an award shall show the exact status, at the time of the rendition of the service on which the recommendation is based, with respect to citizenship, employment, and all other material factors, of the person who is being recommended for the National Security Medal.

5. Each recommendation shall contain a draft of an appropriate citation to accompany the award of the National Security Medal.

Approved:

HARRY S. TRUMAN,

January 19, 1953.

Also on January 19, 1953, President Truman, by letter to the Director of Central Intelligence, authorized the Director to award the National Security Medal:

Pursuant to Executive Order 10431 signed by me this date, I hereby authorize you to make awards of the National Security Medal in accordance with the attached regulations, which I hereby approve.

The National Security Medal has been awarded to the following persons, a number of whom were CIA officials:

Walter Bedell Smith	1953
Kermit Roosevelt	1953
Joseph N. Wenger	1953
Edward G. Lansdale	1954
John Edgar Hoover	1955
William F. Friedman	1955
William Joseph Donovan	1957
Robert D. Murphy	1959
Allen W. Dulles	1961
John A. McCone	1965
Frank B. Rowlett	1966
William F. Raborn, Jr.	1966
Desmond FitzGerald (posthumous)	1967

PART IV

IV
PFIAB

Executive Order 11460

ESTABLISHING THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

Executive Order 11460
ESTABLISHING THE
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

(E.O. 10656, 3 C.F.R., 1954-1958 Comp., p. 300, February 6, 1956
(effective January 13, 1956);
E.O. 10938, 3 C.F.R., 1959-1963 Comp., p. 469, May 4, 1961;
E.O. 11460, 3 C.F.R., 1969 Comp., p. 112, March 20, 1969)[1]

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. There is hereby established the President's Foreign Intelligence Advisory Board,[2] hereinafter referred to as "the Board." The Board shall:

(1) advise the President concerning the objectives, conduct, management and coordination of the various activities making up the overall national intelligence effort;

(2) conduct a continuing review and assessment of foreign intelligence and related activities in which the Central Intelligence Agency and other Government departments and agencies are engaged;

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[1] Of these three executive orders, only E.O. 11460 continues in force. The others are cited here merely to indicate the chronology of the instruments which established the current President's Foreign Intelligence Advisory Board and its predecessor organizations.

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[2] The President's Foreign Intelligence Advisory Board is traceable to a recommendation in the Report of the Commission on Organization of the Executive Branch of the Government (the Second Hoover Commission) of June 1955, "Intelligence Activities":

Recommendation:

(a) That the President appoint a committee of experienced private citizens, who have the responsibility to examine and report to him periodically on the work of Government foreign intelligence activities. This committee should also give such information to the public as the President may direct. The committee should function on a part-time and per diem basis.

Executive Order 10656, February 6, 1956, established the President's Board of Consultants on Foreign Intelligence Activities, and otherwise implemented most of the features of that recommendation. That Executive Order was revoked and the President's Foreign Intelligence Advisory Board was established by Executive Order 10938, May 4, 1961.

(3) receive, consider and take appropriate action with respect to matters identified to the Board, by the Central Intelligence Agency and other Government departments and agencies of the intelligence community, in which the support of the Board will further the effectiveness of the national intelligence effort; and

(4) report to the President concerning the Board's findings and appraisals, and make appropriate recommendations for actions to achieve increased effectiveness of the Government's foreign intelligence effort in meeting national intelligence needs.

SEC. 2. In order to facilitate performance of the Board's functions, the Director of Central Intelligence and the heads of all other departments and agencies [3] shall make available to the Board all information with respect to foreign intelligence and related matters which the Board may require for the purpose of carrying out its responsibilities to the President in accordance with the terms of this Order. Such information made available to the Board shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and regulations.

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[3] Executive Order 11460 was followed by an implementing letter from President Nixon to the responsible officials:

The White House
March 24, 1969

MEMORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

SUBJECT: UNITED STATES FOREIGN INTELLIGENCE ACTIVITIES

My issuance on March 20, 1969, of Executive Order Number 11460 establishing the President's Foreign Intelligence Advisory Board, is in keeping with this Administration's objective of strengthening wherever possible the collection, evaluation and timely dissemination of reliable foreign intelligence by the military and civilian agencies of Government. The Board is charged with the responsibility of being able to assure me at all times of the quality, responsiveness and reliability of the intelligence provided to policy-making personnel.

SEC. 3. Members of the Board shall be appointed by the President from among persons outside the Government,[4] qualified on

(Footnote 3—Continued)

I shall look to the Director of Central Intelligence to continue to provide coordination and guidance to the total foreign intelligence activities of the United States with the view to assuring a comprehensive and integrated effort on the part of the United States Government agencies.

As provided in the Executive Order, it shall be the responsibility of the Foreign Intelligence Advisory Board to review and keep me advised concerning all significant aspects of foreign intelligence and related activities in which the General Intelligence Agency and other elements of the intelligence community are engaged. Because of the importance of the strategic nuclear threat, I have also assigned to the Board a special responsibility to make a yearly, independent assessment of the nuclear threat, supplementing regular intelligence assessments made thereon by the intelligence community.

In order that the Board may be enabled to fulfill its tasks, I ask the heads of the Departments and Agencies concerned to furnish complete information and full cooperation to the Board for the purpose of carrying out its responsibilities to me.

RICHARD NIXON

[4] The members of the Board, as of this writing (July 26, 1971), are:

Admiral George W. Anderson, Jr., USN (Retired), former Chief of Naval Operations, *Chairman*
William O. Baker, vice president, research, Bell Telephone Laboratories, Inc.
Gordon Gray, former Special Assistant to the President for National Security Affairs
Edwin H. Land, president, Polaroid Corp.
Franklin B. Lincoln, Jr., member of the New York law firm, Mudge, Rose, Guthrie & Alexander
Franklin D. Murphy, chairman of the board, Times Mirror Company
Robert D. Murphy, chairman of the board, Corning Glass International
Frank Pace, Jr., president, International Executive Service Corps
Nelson A. Rockefeller, Governor of New York
Dr. Edward Teller, University of California

The Board, as appointed by President Nixon in March 1969 (Weekly Compilation of Presidential Documents, March 24, 1969, p. 441), was composed of the above listed members except that General Maxwell B. Taylor, President of the Institute of Defense Analysis, was chairman, Admiral Anderson was a member only and Dr. Teller was not a member. On April 27, 1970, the President announced his acceptance of the resignation of General Taylor as member and chairman, effective April 30, 1970, and his appointment of Admiral Anderson as chairman, effective May 1, 1970 (Weekly Compilation of

the basis of knowledge and experience in matters relating to the national defense and security, or possessing other knowledge and abilities which may be expected to contribute to the effective performance of the Board's duties. The members of the Board shall receive such compensation and allowances, consonant with law, as may be prescribed hereafter.

SEC. 4. The Board shall have a staff headed by an Executive Secretary, who shall be appointed by the President and shall receive such compensation and allowances, consonant with law, as may be prescribed by the Board. The Executive Secretary shall be authorized, subject to the approval of the Board and consonant with law, to appoint and fix the compensation of such personnel as may be necessary for performance of the Board's duties.

SEC. 5. Compensation and allowances of the Board, the Executive Secretary, and members of the staff, together with other expenses arising in connection with the work of the Board, shall be paid from the appropriation appearing under the heading "Special Projects" in the Executive Office Appropriation Act, 1969, Public Law 90-350,[5] 82 Stat. 195, and, to the extent permitted by law, from any corresponding appropriation which may be made for subsequent years.[6] Such payments shall be made without regard to the provisions of section 3681 of the Revised Statutes and section

(Footnote 4—Continued)
Presidential Documents, May 4, 1970, p. 588). The appointment of John B. Connally, former Governor of Texas, as a member was announced by the President on November 30, 1970, to "become effective on December 1, 1970" (Weekly Compilation of Presidential Documents, December 7, 1970, p. 1616). The appointment of Governor Connally to be Secretary of the Treasury was announced on December 14, 1970, and he was sworn in as Secretary on February 11, 1971 (Weekly Compilation of Presidential Documents, February 15, 1971, p. 213). The Executive Order, in Section 3, provides that the members are to be appointed by the President "from among persons outside the Government," but does not also specify that membership of a member ceases upon his subsequent appointment to a government position. The history of PFIAB, as well as the actions which followed the announcement of Connally's appointment as Secretary of the Treasury, are clear, however, that government officials are not to serve on the Board. Governor Connally was never sworn in as a member and never served. The appointment of Dr. Teller as a member was announced by the President on July 22, 1971 (Weekly Compilation of Presidential Documents, July 26, 1971, p. 1071).

9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672 [7] and 673).[8]

SEC. 6. Executive Order No. 10938 of May 4, 1961,[9] is hereby revoked.

RICHARD NIXON

The White House,
March 20, 1969.

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[5] The pertinent language of P.L. 90-350 is as follows:

TITLE III—EXECUTIVE OFFICE OF THE PRESIDENT

SPECIAL PROJECTS

For expenses necessary to provide staff assistance for the President in connection with special projects, to be expended in his discretion and without regard to such provisions of law regarding the expenditure of Government funds or the compensation and employment of persons in the Government service as he may specify, $1,500,000: *Provided,* That not to exceed 20 per centum of this appropriation may be used to reimburse the appropriation for "salaries and expenses, The White House Office," for administrative services: *Provided further,* That not to exceed $10,000 shall be available for allocation within the Executive Office of the President for official reception and representation expenses.

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[6] An example of a "corresponding appropriation which may be made for subsequent years" is in TITLE III of the appropriation act for the Executive Office of the President, 1970 (83 Stat. 116, P.L. 91-74, September 29, 1969), in language identical with that of TITLE III of P.L. 90-350.

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[7] Section 672 of Title 31 prohibits Government accounting and disbursing officers from allowing or paying any account or charge in any way connected with any commission or inquiry (except courts-martial and military or naval courts of inquiry) "until special appropriations shall have been made by law to pay such accounts and charges."

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[8] Section 673 of Title 31 prohibits the payment of any public moneys or any appropriations for the expenses of any "commission, council, board, or other similar body," or of any members thereof "unless the creation of the same shall be or shall have been authorized by law"; nor shall personal services be employed "from any executive department or other Government establishment in connection with any such" body.

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[9] See Footnote 2.

PART V

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1964 FOR CERTAIN EMPLOYEES, as amended

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PART VI

extracts from

STATUTES HAVING SPECIAL APPLICATION TO THE CENTRAL INTELLIGENCE AGENCY OR CIA ACTIVITIES

INDEX — Statute Extracts Having Special Application to the Central Intelligence Agency or CIA Activities

NOTE—*Content and Concepts of PART VI.* All statutes ever enacted which specifically refer to the Central Intelligence Agency are included in the *Guide*. These are of two types. First, those statutes, or major portions of statutes, which apply primarily to CIA. In this category are the National Security Act of 1947 (section 102), the Central Intelligence Agency Act of 1949, and the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, included as PARTS I, II and V of the *Guide*. (Those provisions of the National Security Act which established and provide for the National Security Council, namely section 101, are also included in PART I.) Second, a number of statutes of general application, by their terms, have a special or limited application to CIA. All statutes in this category are covered in PART VI and this INDEX.

We have also included in PART VI and this INDEX three statutes which do not specifically refer to CIA but are particularly important to CIA activities. These are the criminal statute which prohibits certain disclosures of classified information concerning cryptographic systems and communications intelligence activities of the United States (18 U.S.C. 798), the 1968 statute requiring departments and agencies to assist the Secret Service in protecting the President and certain other individuals, and portions of the Omnibus Crime Control and Safe Streets Act of 1968.

Only one statute having specific reference to CIA, namely the Emergency Detention Act of 1950 (64 Stat. 1019, P.L. 81-831, September 23, 1950), has ever been repealed without also being replaced by another statute. That Act, repealed in 1971 by P.L. 92-128 (85 Stat. 347, September 25, 1971), therefore is not included in the *Guide*.

Three statutes specifically applicable to CIA which have never been repealed have become inoperative because the activities authorized by those statutes have been completed. These three, a military construction authorization act of 1955, the Supplemental Appropriation Act, 1956, and the Supplemental Appropriation Act,

1957, authorized the construction, and appropriated the funds for the construction of what is now the CIA headquarters building and installation in Langley, Virginia. These statutes, which are not included in the *Guide*, are cited: 69 Stat. 324, P.L. 84-161, July 15, 1955; 69 Stat. 450, P.L. 84-219, August 4, 1955; and 70 Stat. 678, P.L. 84-814, July 27, 1956, respectively.

The statutes covered in PART VI are quoted, and commented on in footnotes, only to the extent necessary to pinpoint or explain the significance of these laws to the Central Intelligence Agency. Unless otherwise indicated, the statute texts are from the appropriate title of the United States Code, rather than the specific public laws.

In sum, the texts of all *current* statutory CIA law are to be found in PARTS I, II, V and VI. Citations to all repealed or inoperative CIA statutes also are included in those four PARTS or this Index.

The statutes, arranged in PART VI in chronological order, are:

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

[63 Stat. 377, P.L. 81-152, June 30, 1949, 40 U.S.C.A. 474(17);
79 Stat. 1127, P.L. 89-306, October 30, 1965, 40 U.S.C.A. 759;
88 Stat. 796, P.L. 93-400, August 30, 1974, 41 U.S.C.A. 405, 408]

40 U.S.C.A. 474. Congress, departments, agencies, corporations, and persons exempted from provisions.

The authority conferred by this Act [1] shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith, except as provided by the Office of Federal Procurement Policy Act,[2] and except that sections 486(b) and 487(c) of this title shall not be applicable to any Government corporation or agency which is subject to the Government Corporation Control Act.

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[1] The Federal Property and Administrative Services Act of 1949, together with the Office of Federal Procurement Policy Act (88 Stat. 796, P.L. 93-400, August 30, 1974, 41 U.S.C. 401 et seq.), is the basic statutory law for the procurement of property and services by the executive branch agencies. The Act closely parallels the Armed Services Procurement Act of 1947, certain sections of which are available to the Central Intelligence Agency as provided by section 3 of the Central Intelligence Agency Act of 1949 (pp. 31-32 of the *Guide*).

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[2] The Office of Federal Procurement Policy Act directs the Administrator of General Services to provide overall direction of procurement policy and to prescribe policies and regulations in the procurement of certain property, services and construction, which "shall be followed by executive agencies" (41 U.S.C.A. 405). The Act further prescribes that "the authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 405" (41 U.S.C.A. 408).

Nothing in this Act shall impair or affect any authority of—

(17) the Central Intelligence Agency; . . . .[3]

40 U.S.C.A. 759. Procurement, maintenance, operation and utilization of automatic data processing equipment—Authority of Administrator to coordinate and provide for purchase, lease and maintenance of equipment by Federal agencies.

(a) The Administrator [of General Services] is authorized and directed to coordinate and provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal agencies.

Procurement, maintenance and repair of equipment; transfer between agencies; joint utilization; establishment and operation of equipment pools and data processing centers; delegation of Administrator's authority.

(b)(1) Automatic data processing equipment suitable for efficient and effective use by Federal agencies shall be provided by the Administrator through purchase, lease, transfer of equipment from other Federal agencies, or otherwise, and the Administrator is authorized and directed to provide by contract or otherwise for the maintenance and repair of such equipment. In carrying out his responsibilities under this section the Administrator is authorized to transfer automatic data processing equipment between Federal agencies, to provide for joint utilization of such equipment by two or more Federal agencies, and to establish and operate equipment pools and data processing centers for the use of two or more such agencies when necessary for its most efficient and effective utilization.

(2) The Administrator may delegate to one or more Federal agencies authority to operate automatic data processing equipment pools and automatic data processing centers, and to lease, purchase, or maintain individual automatic data processing systems or specific units of equipment, including such equipment used in automatic data processing pools and automatic data processing centers, when

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[3] Sections 3 and 8 of the Central Intelligence Act of 1949, as amended (pp. 31-32, 37-38 of the *Guide*), provide procurement authority for the Agency.

Section 474(17) of title 40 of the United States Code is the codification of section 502(d)(17) of P.L. 81-152.

such action is determined by the Administrator to be necessary for the economy and efficiency of operations, or when such action is essential to national defense or national security.[4] The Administrator may delegate to one or more Federal agencies authority to lease, purchase, or maintain automatic data processing equipment to the extent to which he determines such action to be necessary and desirable to allow for the orderly implementation of a program for the utilization of such equipment.

Inapplicability of other inconsistent provisions of law.

(e) The proviso following paragraph (4) in section 481(a) of this title and the provisions of section 474 of this title shall have no application in the administration of this section.[5] No other provision of this Act or any other Act which is inconsistent with the provisions of this section shall be applicable in the administration of this section.[6]

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[4] This provision is intended to avoid conflict with the responsibility of the Director to protect intelligence sources and methods from unauthorized disclosure (subsection 102(d)(3) of the National Security Act of 1947, page 4 of the *Guide*). The Agency, however, had requested certain specific exemptions "where a head of a federal agency determines that compliance will require the disclosure of national security information for which he has responsibility, pursuant to law, to protect from unauthorized disclosure" (letter of April 8, 1965, to Chairman, House Committee on Government Operations, set out in Sen. Rep. No. 89-938, October 22, 1965). It is clear from the reports accompanying the bill (Sen. Rep. No. 89-938 and H.R. Rep. No. 89-802, September 2, 1965) that Congress intended that agencies with intelligence or secret responsibilities maintain their secrecy as provided by statutes and as directed by the President.

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[5] Thus the savings provision of 40 U.S.C.A. 474(17) (p. 152 of the *Guide*), enacted by the 1949 Act, is negated as to 40 U.S.C.A. 759, the 1965 amendment concerning automatic data processing equipment.

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[6] Section 759 of title 40 of the Code is the codification of section 111 of the Federal Property and Administrative Services Act of 1949, which was added to that Act by P.L. 89-306.

CLASSIFICATION ACT OF 1949

[63 Stat. 954, P.L. 81-429, October 28, 1949, 5 U.S.C.A. 5102, 5331, 5342] [1]

5 U.S.C.A. 5102. Definitions; application.

(a)(1)(vi) For the purpose of . . . chapter [51 of title 5 of the United States Code] "agency" . . . does not include . . . the Central Intelligence Agency. . . .

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[1] The Classification Act of 1949 authorized the classification of positions in the departments and agencies, as to duties, responsibilities and qualification requirements, and established compensation schedules and other compensation rules, but by its terms did not apply to the Central Intelligence Agency. The exemption, enacted as subsection 202(16) of the 1949 Act, is codified at 5 U.S.C.A. 5102(a)(1)(vi), as to the classification of positions, at 5331(a), as to pay rates for General Schedule positions, and at 5 U.S.C.A. 5342(a)(1)(F), as to pay rates for "blue collar" employees.

It is to be noted that the Classification Act of 1949, specifically exempting CIA from its application, was not enacted until October 1949, four months after the effective date of the Central Intelligence Agency Act of 1949. An exchange of correspondence between the Agency and the Civil Service Commission in June and August 1949 established the position that the Agency, by virtue of what is now section 8 of the CIA Act of 1949, was exempt from the Classification Act of 1923, the statute then in force which was repealed and replaced by the Classification Act of 1949. By letter of August 10, 1949 to the Commission, the Director indicated the Agency's intention, as an administrative policy, to adhere to the basic philosophy and principles of the Classification Act and related Civil Service standards, notwithstanding that the Act was not applicable to the Agency. That policy was reiterated in a memorandum of October 8, 1962 by the Acting Director of Central Intelligence and was the basis for a Comptroller General ruling in August 1964 that statutory increases in compensation for General Schedule positions enacted with retroactive effect would apply retroactively also with respect to compensation for CIA employees. See 44 Comp. Gen. 89, at page 198, PART VIII of the *Guide*.

5 U.S.C.A. 5331. Definitions; application.

(a) For the purpose of . . . subchapter [III of chapter 53 of title 5], "agency" . . . [has the meaning given it] by section 5102 of this title.

5 U.S.C.A. 5342. Definitions; application.

(a)(1)(F) For the purpose of . . . subchapter [VI of chapter 53 of title 5] "agency" . . . does not include . . . the Central Intelligence Agency. . . .

DISCLOSURE OF CLASSIFIED INFORMATION CONCERNING CRYPTOGRAPHIC SYSTEMS AND COMMUNICATIONS INTELLIGENCE ACTIVITIES OF THE UNITED STATES [1]

[64 Stat. 159, P.L. 81-513, May 13, 1950;
65 Stat. 710, P.L. 82-248, October 31, 1951, 18 U.S.C.A. 798] [2]

18 U.S.C.A. 798. Disclosure of classified information.[3]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication, intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

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[1] The heading of this page is an abbreviation of the title of the statute.

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[2] By error, there is in existence another section 798 of title 18, which in no way relates to this section 798.

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[3] See H.R. Rep. No. 81-1895 for an account of the need for the legislation. As the Report indicates, CIA was among the advocates of the bill.

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.[4]

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;[5]

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the cate-

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[4] In addition, under the so-called Hiss Act (5 U.S.C. 8312-8315), retirement benefits are not payable with respect to an individual convicted of a violation of section 798 or of perjury in connection with that section.

It is believed the only case prosecuted under the section to date is a 1954 case in the District Court for the Eastern District of Virginia, in which the defendant entered a guilty plea. *United States v. Peterson* (1955, unreported).

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[5] It is to be noted that "classified information" is not defined in terms of an Executive order. In contrast, classified information is exempt from the mandatory disclosure provisions of the Freedom of Information Act only if it is classified pursuant to such an order (5 U.S.C. 552(b)(1)).

gories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

REGISTRATION OF CERTAIN PERSONS TRAINED IN FOREIGN ESPIONAGE SYSTEMS [1]

[64 Stat. 987, P.L. 81-831, September 23, 1950;
70 Stat. 899, P.L. 84-893, August 1, 1956, 50 U.S.C.A. 851, 852] [2]

50 U.S.C.A. 851. Registration of certain persons; filing statement; regulations.

Except as provided in section 852 of this title, every person who has knowledge of, or has received instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, shall register with the Attorney General by filing with the Attorney General a registration statement in duplicate, under oath, prepared and filed in such manner and form, and containing such statements, information, or documents pertinent to the purposes and objectives of this subchapter as the Attorney General, having due regard for the national security and the public interest, by regulations prescribes.

50 U.S.C.A. 852. Exemption from registration.

The registration requirements of section 851 of this title do not apply to any person—

(a) who has obtained knowledge of or received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party by reason of civilian, military, or police service or employment with the United States Government, . . .;

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[1] The heading at the top of this page is not the title of the statute but is the title of subchapter V of chapter 23 of title 50 of the United States Code. Subchapter V is the codification of P.L. 84-893, which repealed the provisions of the 1950 Act (P.L. 81-831) concerning the registration of persons trained in foreign espionage systems.

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[2] Sections 851 and 852 of title 50 are the codification of sections 2 and 3 of P.L. 84-893.

(c) who has made full disclosure of such knowledge, instruction or assignment to officials within an agency of the United States Government having responsibilities in the field of intelligence, which disclosure has been made a matter of record in the files of such agency, and concerning whom a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security; [or]

(d) whose knowledge of, or receipt of instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, is a matter of record in the files of an agency of the United States Government having responsibilities in the field of intelligence and concerning whom a written determination is made by the Attorney General or the Director of Central Intelligence, based on all information available, that registration would not be in the interest of national security; . . . .

IMMIGRATION AND NATIONALITY ACT

[66 Stat. 163, P.L. 82-414, June 27, 1952, 8 U.S.C.A. 1127]

§ 405(e) [of P.L. 82-414] [1]

This Act shall not be construed to repeal, alter, or amend . . . [section 7 of the Central Intelligence Act of 1949, as amended] . . . .[2]

8 U.S.C.A. 1105. Liaison with internal security officers.[3]

The Commissioner [of Immigration and Naturalization] and the administrator [of the Bureau of Security and Consular Affairs of the Department of State] shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this chapter in the interest of the internal security of the United States.[4] The Commissioner and the administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administraion of this chapter, and all other immigration and nationality laws.

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[1] Section 405(e) of P.L. 82-414 is set out in the Historical Note following 8 U.S.C.A. 1101.

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[2] Section 7 of the Central Intelligence Agency Act of 1949 is at page 7 of the *Guide*.

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[3] Section 1105 of title 8 of the United States Code is the codification of section 105 of P.L. 82-414.

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[4] But see the provision of subsection 102(d)(3) of the National Security Act of 1947 that "the Agency shall have no . . . internal-security functions" (page 4 of the *Guide*).

8 U.S.C.A. 1427. Requirements of naturalization—Residence.[5]

Physical presence

(c) The granting of the benefits of subsection (b) of this section [6] shall not relieve the petitioner from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of this section of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing a petition for naturalization.

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[5] Section 1427 of title 8 of the Code is the codification of section 316 of P.L. 82-414.

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[6] Subsection 1427(a) established certain requirements of residence and physical presence within the United States for naturalization. The "benefits" of subsection (b) are the relief from some of such requirements for certain categories of persons, including certain persons "employed by or under contract with the Government of the United States."

ATOMIC ENERGY ACT OF 1954

[68 Stat. 919, August 30, 1954, 42 U.S.C.A. 2162, 2164, 2165;
72 Stat. 276, P.L. 85-479, July 2, 1958;
75 Stat. 475, P.L. 87-206, September 6, 1961;
88 Stat. 1233, P.L. 93-438, October 11, 1974]

42 U.S.C.A. 2162. Classification and declassification of Restricted Data—Periodic determination.

Joint determination on atomic energy programs

(e) The . . . [Administrator of the Energy Research and Development Administration] [1] shall remove from the Restricted Data [2] category such information concerning the atomic energy programs of other nations as the . . . [Administrator] and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 403(d) of Title 50 [3] and can be adequately safeguarded as defense information.[4]

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[1] The Atomic Energy Commission was abolished by P.L. 93-438, the Energy Reorganization Act of 1974. All AEC functions relevant to the authority and functions of the Director of Central Intelligence or the Central Intelligence Agency were transferred to the Energy Research and Development Administration, which was established by that Act.

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[2] "Restricted Data" is defined by section 2014(y) of title 42 of the United States Code as follows:

> The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

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[3] Section 403(d) of title 50 of the Code is section 102(d) of the National Security Act of 1947 and is set out at pages 3-4 of the *Guide*.

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[4] "Defense information" is defined in subsection 2014(h) of title 42 as follows:

> (h) The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

42. U.S.C.A. 2164. International Cooperation—by . . . [Administrator].

Communication of data by other Government agencies.

(d) The President may authorize any agency of the United States to communicate [to another nation or a regional defense organization to which the United States is a party] in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), or (c) of this section, such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.[5]

42 U.S.C.A. 2165. Security restrictions—on contractors and licensees.

Acceptance of investigation and clearance granted by other Government agencies.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this section,[6] the . . . [Administrator] may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

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[5] The President, by Executive Order 10899 (3 C.F.R., 1959-1963 Comp., p. 427, 42 U.S.C. 2162 Note), has authorized the Central Intelligence Agency to so communicate certain Restricted Data, subject to the limitations and restrictions of that Order.

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[6] Subsection (b) of section 2165 prohibits the Administrator of the Energy Research and Development Administration from permitting any person to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Administrator on the character, associations, and loyalty of such individual and the Administrator shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

amendment to

PERFORMANCE RATING ACT OF 1950

[68 Stat. 1105, P.L. 83-763, September 1, 1954, 5 U.S.C.A. 4301] [1]

5 U.S.C.A. 4301. Definitions.

For the purpose of . . . chapter [43 of title 5 of the United States Code][2] "agency" . . . does not include . . . the Central Intelligency Agency. . . .

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[1] Section 4301 of title 5 of the United States Code is the codification of section 2(b)(12) of the Performance Rating Act of 1950 as amended by P.L. 83-763.

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[2] Chapter 43 is the codification of the Performance Rating Act of 1950. Chapter 43 requires agencies to establish performance rating plans for evaluating work performance of agency employees. The administration of performance rating plans by the Agencies is subject to inspection by the Civil Service Commission for compliance with the requirements of the chapter. The Commission may revoke its approval of an agency plan and prescribe a different plan for use of any agency. On the request of an employee an impartial review of his performance rating is to be provided by the agency and, as to certain ratings, the employee is entitled to a hearing. The appeal is to be considered by a board, one of whose members is designated by the agency involved, one by the employee and one by the Civil Service Commission. The hearing and decision also are within the competence of the board.

ATOMIC WEAPONS AND SPECIAL NUCLEAR MATERIALS REWARDS ACT

[69 Stat. 365, P.L. 84-165, July 15, 1955, 50 U.S.C.A. 47c, 47e;[1]
79 Stat. 1321, Reorg. Plan No. 4 of 1965, July 27, 1965,
5 U.S.C.A., App., p. 376;
88 Stat. 472, P.L. 93-377, August 17, 1974.]

50 U.S.C.A. 47c. Aliens; waiver of admission requirements.

If the information leading to an award under section 47b [2] of this title is furnished by an alien, the Secretary of State, the Attorney General, and the Director of Central Intelligence, acting jointly, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act.

50 U.S.C.A. 47e. Certification of award; approval; payment.

Any awards granted under section 47b [3] of this title shall be certified by the Attorney General and, together with the approval of

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[1] Section 47c of title 50 of the United States Code is the codification of section 4 of P.L. 84-165. Section 47e is the codification of section 5 of P.L. 84-165, as amended by P.L. 93-377.

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[2] Section 47a of title 50 authorizes a reward of up to $500,000 to be paid to any person furnishing to the United States certain original information concerning special nuclear material or an atomic weapon. Under section 47b the Attorney General is to "determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid pursuant to section 47a. . . ."

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[3] See footnote 2. Under the 1955 Act (P.L. 84-165), the rewards were to be granted, with the approval of the President in the case of awards in excess of $50,000, and certified by an Awards Board. The Director of Central Intelligence was a member of the Board. The functions of the Board were transferred to the Attorney General in 1965 by Reorganization Plan No. 4 of 1965.

the President in those cases where such approval is required, transmitted to the Director of Central Intelligence for payment out of funds appropriated or available for the administration of the National Security Act of 1947, as amended.

amendment to

CIVIL SERVICE ACT OF 1883

[70 Stat. 652, P.L. 84-801, July 25, 1956, U.S.C.A. 2953(b)][1]

5 U.S.C.A. 2953. Reports to Congress on additional employee requirements.

(b) Subsection (a)[2] of this section does not apply to . . . the Central Intelligence Agency; . . . .

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[1] Section 2953 of title 5 of the United States Code is the codification of section 11 of the Civil Service Act of 1883, which was added to that Act by P.L. 84-801.

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[2] Subsection (a) of section 2953 requires that certain reports, recommendations and other communications "of an official nature" shall also include certain estimates of man-years of employment, expenditures for personal services and all other expenditures attributable to the function, activity or authority.

[78 Stat. 415, P.L. 88-426, August 14, 1964, 5 U.S.C.A. 5311, 5313, 5314, 5363;
81 Stat. 624, P.L. 90-206, December 16, 1967, 2 U.S.C.A. 358;
89 Stat. 419, P.L. 94-82, August 9, 1975]

5 U.S.C.A. 5311. The Executive Schedule.

The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions to which . . . [subchapter II of chapter 53 of title 5 of the United States Code] applies.

5 U.S.C.A. 5313. Positions at level II.

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such levels under chapter 11 of title 2, as adjusted by section 5318 of . . . title [5 of the United States Code:] [1]

(15) Director of Central Intelligence.[2]

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[1] Section 5318 provides that the rate of pay for each level of the Executive Schedule is to be adjusted by an amount (rounded to the *nearest* multiple of $100) equal to the percentage of such annual rate of pay which corresponds to the percentage of the adjustment in the rates of pay under the General Schedule.

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[2] The rate of pay for the position of Director of Central Intelligence was established at $14,000 per annum by the National Security Act of 1947, and adjusted in 1949 to $16,000 by P.L. 81-359 (63 Stat. 880) and to $21,000 in 1956 by P.L. 84-854 (70 Stat. 736, the Federal Executive Pay Act of 1956). The rate of pay for Executive Level II positions was set at $30,000 by the Federal Executive Salary Act of 1964 and adjusted to $42,500 in 1969 by the recommendation of the President (2 U.S.C.A. 358 Note), as provided by the Federal Salary Act of 1967 (81 Stat. 624, P.L. 90-206). It was further adjusted in 1975 to $44,600 by Executive Order 11883 (40 *Fed. Reg.* 196, October 8, 1975), as provided by section 5313 of title 5, as amended by the Executive Salary Cost-of-Living Adjustment Act (89 Stat. 419, P.L. 94-82, August 9, 1975).

As to the effect of the Dual Compensation Act (5 U.S.C.A. 5531) on the civilian compensation and retired pay benefits which a retired regular commissioned officer who is appointed as Director of Central Intelligence may receive in that position, see a 1965 decision of the Comptroller General of the United States, 44 Comp. Gen. 708 (p. 199 of the *Guide*).

5 U.S.C.A. 5314. Positions at level III.

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such levels under chapter 11 of title 2, as adjusted by section 5318 of . . . title [5 of the United States Code]:

(36) Deputy Director of Central Intelligence.[3]

5 U.S.C.A. 5363. Limitation on pay fixed by administrative action.

Except as provided by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the maximum rate for GS-18. This section does not impair the authorities provided by—

(4) sections . . . [1-3, 4-7, and 8 of the Central Intelligence Agency Act of 1949, as amended].[4]

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[3] The rate of pay for the position of Deputy Director of Central Intelligence was first established by statute in 1949, at $14,000, by P.L. 81-359. It was adjusted to $14,800 in 1952, by administrative action, with retroactive effect as provided by P.L. 82-375 and to $20,500 by the Federal Executive Pay Act of 1956. The rate of pay for Executive Level III positions was set at $28,500 by the Federal Executive Salary Act of 1964 and adjusted in 1967 to $29,500 by the Federal Salary Act of 1967 and, in 1969, to $40,000 by the recommendation of the President, as provided by that Act. It was further adjusted in 1975 to $42,000 by Executive Order 11883, as provided by section 5315 of title 5, as amended by the Executive Salary Cost-of-Living Adjustment Act. See footnote 2 above for citations to the statutes and Presidential actions mentioned in this footnote.

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[4] The Central Intelligence Agency Act of 1949 is set out in Part II of the *Guide*.

AGENCIES TO ASSIST IN SECRET SERVICE PROTECTIVE DUTIES [1]

[82 Stat. 170, P.L. 90-331, June 6, 1968, 18 U.S.C.A. 3056]

18 U.S.C.A. 3056. Secret Service powers.

(a) Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to protect the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President or other officer next in order of succession to the office of President, and the Vice President-elect; protect the person of a former President and his wife during his lifetime, the person of the widow of a former President until her death or remarriage, and minor children of a former President until they reach sixteen years of age, unless such protection is declined; protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad; . . . .

§ 1 [of P.L. 90-331.[2] Additional powers; advisory committee.]

That (a) the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to persons who are determined from time to time by the Secretary of the Treasury, after consultation with the advisory committee, as being major presidential or vice presidential candidates who should receive such protection (unless the candidate has declined such protection).

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[1] The heading of this page is not the title of a statute. Rather it is a general description of the duties authorized for departments and agencies, including CIA, by section 2 of P.L. 90-331.

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[2] P.L. 90-331 is set out in the Historical Note following 18 U.S.C.A. 3056.

§ 2 [of P.L. 90-331. Assistance of Federal Departments and Agencies.]

Hereafter, when requested by the Director of the United States Secret Service, Federal Departments and agencies, unless such authority is revoked by the President, shall assist the Secret Service in the performance of its protective duties under section 3056 of title 18 of the United States Code and the first section of this . . . [statute].[3]

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[3] One of the purposes in authorizing departments and agencies to assist the Secret Service to perform its protective duties was to make certain that employees of departments and agencies assigned to and performing such duties would enjoy personal civil immunity as to their actions in the performance of such duties. A decision by a United States Court of Appeals the previous year had cast some doubt on the point. *Scherer v. Brennan* 379 F. 2d 609 (1967).

Another 1970 statute, P.L. 90-217 (84 Stat. 74, March 19, 1970, 3 U.S.C.A. 202), authorizes the protection of some persons and installations not entitled to protection under section 3056 of title 18 or P.L. 90-331, in particular, certain foreign diplomatic missions. P.L. 90-217 does not, however, authorize departments and agencies to assist with that protection.

PREFACE

The *Guide to Central Intelligence Agency Statutes and Law* is a successor publication to our earlier *Text and Explanation of Statutes and Executive Orders Relating Specifically to the Central Intelligence Agency*. In arrangement, it is modeled in part on *Text and Explanation*, in that it consists of the texts (or excerpts from the texts) of statutes and executive orders having special significance to CIA and includes some historical and legal comments and annotations concerning those statutes and executive orders. But also included are digests or summaries of all court cases involving the three basic CIA statutes, several other court decisions significant to CIA and all Comptroller General decisions and several government regulations having specific application to CIA. A number of basic policy decisions also are indicated in certain Footnotes. The new name of the publication therefore seems more appropriate.

The *Guide* is arranged as follows:

PART I, excerpts from the National Security Act of 1947;

PART II, the CIA Act of 1949;

PART III, the Executive Order which established the National Security Medal;

PART IV, the Executive Order which established the President's Foreign Intelligence Advisory Board;

PART V, the CIA Retirement Act of 1964 for Certain Employees;

PART VI, excerpts from other statutes;

PART VII, excerpts from other executive orders;

PART VIII, Comptroller General decisions concerning CIA.

The five statutes and executive orders comprising PARTS I through V are presented in chronological order, and the materials within the other PARTS also are assembled on that basis. Thus, a time picture of successive legislative and other legal actions concerning CIA is presented.

February 1971

A difference in the arrangement of the materials should be noted. In PARTS I, II, IV and V, the text is the language of the indicated statute or executive order, with background information and explanation, and legal history and legal opinion, included only in Footnotes. Much of the material in the other PARTS consists of narrative comment concerning the statute or executive order involved, including certain statutes and executive orders which specifically exempt CIA, with Footnotes used mainly for purposes of citation. Note also that in PARTS I, II and V, and with respect to several statutes in PART VI, the Footnotes appear following the text of the statutes. In the other PARTS they appear on the same page as do the words to which they are keyed.

Except in the case of section 3 of the CIA Act of 1949, and the entire CIA Retirement Act of 1964, for which there are Footnotes of explanation, the statute texts herein are those of the indicated statutes as now existing in codified form in the current United States Code Annotated, that is, the Code Annotated and the current Cumulative Annual Pocket Part. Thus, for example, this reprint of section 101(a) of the National Security Act of 1947, as amended, is in the language of that section as it is codified at Title 50, section 402(a), of the Code Annotated. The United States Code Annotated is used because it is brought up to date more frequently than is the United States Code and because it probably is more readily available to more people.

Citations to all amendments and repeals appear in the Footnotes. Citations to the United States Code Annotated are set out in the page margin for certain statute sections. A statute cited in more than one Footnote in PARTS I and II is cited in the first instance to the statute at large, the public law and the date of enactment. In subsequent Footnotes in the same PART, the citation includes a parenthetical reference to the Footnote in which it first appeared. A number of Footnotes in PART V refer to statutes which are cited in full at the heading of page 73. The parenthetical citations appearing at the top of the first page of PART I and on various pages in PART VI include references to amendments which are applicable to CIA. Certain statutes herein have been amended by amendments which do not concern CIA and those amendments are not included.

statute or executive order, with background information and explanation, and legal history and legal opinion, included only in Footnotes. Much of the materials in the other PARTS consists of narrative comment concerning the statute or executive order involved, including certain statutes and executive orders which specifically exempt CIA, with Footnotes used mainly for purposes of citation. Note also that in PARTS I and II, and with respect to the Freedom of Information Act in PART VI, the Footnotes appear following the text of the statutes. In the other PARTS they appear on the same page as do the words to which they are keyed.

Except in the case of section 3 of the CIA Act, for which there is a Footnote of explanation, the statute texts herein are those of the indicated statutes as now existing in codified form in the current United States Code Annotated, that is, the Code Annotated and the Cumulative Annual Pocket Part for Use in 1970. Thus, for example, this reprint of section 101(a) of the National Security Act of 1947, as amended, is in the language of that section as it is codified at Title 50, section 402(a), of the Code Annotated. The United States Code Annotated is used because it is brought up to date more frequently than is the United States Code and because it probably is more readily available to more people.

Citations to all amendments and repeals appear in the Footnotes. Citations to the United States Code Annotated are set out in the page margin for certain statute sections. Where a statute is cited in more than one Footnote in the same PART, it is cited the first time to the statute at large, the public law and the date of enactment. In subsequent Footnotes in the same PART, it is cited only by public law number and by a parenthetical reference to the Footnote in which it first appeared. The parenthetical citations appearing at the top of the first page of a number of PARTS and on various pages in PARTS VI and VII include references to amendments which are applicable to CIA. Certain statutes herein have been amended by amendments which do not concern CIA and those amendments are not included.

The *Guide* is for the use of lawyers and non-lawyers, and some of the resulting problems are apparent. Annotations to repealed and amended legislation are included in more detail than many non-lawyers will find useful. Some of the comments in this Preface concerning statutes and codifications perhaps are not necessary for

lawyers and certain other users. The use of legal terminology is minimized but is not eliminated. In any event, it is our hope that the *Guide* will serve as a useful, informative and accurate reference to CIA law, past and present.

It is intended to keep the *Guide* current, by issuing new pages as legislation or decisions appear, and to make corrections, clarifications and other changes. Sheets transmitting new pages are to be filed in PART IX. By checking his transmittal sheets, which are to be numbered and dated, the user can determine that his copy is current. Transmittal sheets also will describe or identify the nature of the changes in law or the *Guide* which the new pages involve.

We would welcome suggestions to improve the *Guide*, and we request that any errors or omissions or need for clarifications be brought to our attention. Suggestions and comments should be addressed to Richard H. Lansdale, Associate General Counsel, who has had primary responsibility for devising and preparing the *Guide*. Users should destroy their copies of *Text and Explanation of Statutes and Executive Orders Relating Specifically to the Central Intelligence Agency.*

Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel
Central Intelligence Agency

September 1970

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

[82 Stat. 197, P.L. 90-351, June 19, 1968, 18 U.S.C.A. 2511, 2512] [1]

18 U.S.C.A. 2511. Interception and disclosure of wire or oral communications prohibited.

(3) Nothing contained in this chapter [chapter 119 of title 18 of the United States Code] [2] or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605)[3] shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against

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[1] Sections 2511 and 2512 are included in chapter 119 of title 18 of the United States Code, which was added to title 18 by P.L. 90-351.

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[2] Chapter 119 is the statutory criminal law as to the interception and disclosure of certain wire or oral communications and the manufacture, distribution, possession and advertising of devices for the interception of such communications. The chapter also provides authority for interception and disclosure of such communications by the Federal Bureau of Investigation or other Federal agencies having certain law enforcement responsibilities.

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[3] Section 605 prohibits the unauthorized disclosure of interstate or foreign wire or radio communications by persons receiving or transmitting any such communication, the unauthorized interception or disclosure of any such communication and the unauthorized receipt of any such communication.

foreign intelligence activities.[4] Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

18 U.S.C.A. 2512. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited.

(1) Except as otherwise specifically provided in this chapter, any person who willfully—

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

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[4] The rationale for this provision is set out in the Senate committee report (Sen. Rep. No. 90-1097, April 29, 1968):

It is obvious that whatever means are necessary should and must be taken to protect the national security interest. Wiretapping and electronic surveillance techniques are proper means for the acquisition of counterintelligence against the hostile action of foreign powers. Nothing in the proposed legislation seeks to disturb the power of the President to act in this area. Limitations that may be deemed proper in the field of domestic affairs of a nation become artificial when international relations and internal security are at stake.

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of—

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire or oral communications,

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for—

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or, carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION ACT OF 1970

[84 Stat. 1848, P.L. 91-616, December 31, 1970, 42 U.S.C.A. 4561] [1]

42 U.S.C.A. 4561. Program for Federal civilian employees—Development and maintenance by the Civil Service Commission.

(a) The Civil Service Commission shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

Prior alcohol abuse no bar to federal employment; exceptions

(c)(1) No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior alcohol abuse or prior alcoholism.

(2) This subsection shall not apply to employment (A) in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or any other department or agency of the Federal Government designated for purposes of national security by the President, or (B) in any position in any department or agency of the Federal Government, not referred to in clause (A), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

Dismissal for incapacity unaffected

(d) This subchapter shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

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[1] Section 4561 of title 42 of the United States Code is the codification of section 201 of P.L. 91-616.

DRUG ABUSE OFFICE AND TREATMENT ACT OF 1972

[86 Stat. 65, P.L. 92-255, March 21, 1972, 21 U.S.C.A. 1180] [1]

21 U.S.C.A. 1180. Drug abuse among Federal civilian employees—Civil Service Commission responsibility for policies and services; use of existing governmental facilities

(a) The Civil Service Commission shall be responsible for developing and maintaining, in cooperation with the Director and with other Federal agencies and departments, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among Federal civilian employees. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

Disqualification solely on ground of prior drug abuse prohibited; certain agencies, national security employment, and sensitive positions excepted from restriction

(c)(1) No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse.

(2) This subsection shall not apply to employment (A) in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or any other department or agency of the Federal Government designated for purposes of national security by the President, or (B) in any position in any department or agency of the Federal Government, not referred to in clause (A), which position is determined pursuant to regulations prescribed by the head of such department or agency to be a sensitive position.

Dismissal for functional disability

(d) This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

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[1] Section 1180 of title 21 of the United States Code is the codification of section 413 of P.L. 92-255.

CRIME CONTROL ACT OF 1973 [1]

[87 Stat. 211, P.L. 93-83, August 6, 1973, 42 U.S.C.A. 3756] [2]

42 U.S.C.A. 3756. Use of services, equipment, personnel, and facilities of other Federal agencies; Central Intelligence Agency exclusion; reimbursement; reciprocal use by such other Federal agencies; availability of State agency cooperation, services, records, and facilities; use of donated or transferred property for testing purposes.

The [Law Enforcement Assistance] Administration is authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of the Department of Justice and of other civilian or military agencies and instrumentalities of the Federal Government (not including the Central Intelligence Agency), and to cooperate with the Department of Justice and such other agencies and instrumentalities in the establishment and use of services, equipment, personnel, and facilities of the Administration. The Administration is further authorized to confer with and avail itself of the cooperation, services, records, and facilities of State, municipal, or other local agencies, and to receive and utilize, for the purposes of this chapter, property donated or transferred for the purposes of testing by any other Federal agencies, States, units of general local government, public or private agencies or organizations, institutions of higher education, or individuals.

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[1] The Crime Control Act of 1973 is a comprehensive amendment of Title I of the Omnibus Crime Control and Safe Streets Act of 1968. Certain provisions of Title III of the latter Act are included in the *Guide* at pages 177-179.

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[2] Section 3756 of title 42 of the United States Code is the codification of section 508 of P.L. 90-351 (82 Stat. 197, June 19, 1968). The restriction with respect to the Central Intelligence Agency was added by an amendment to section 508 enacted by section 2 of P.L. 93-83.

FOREIGN ASSISTANCE ACT OF 1974

[88 Stat. 1795, P.L. 93-559, December 30, 1974]

Intelligence Activities and Exchanges of Materials

Sec. 32 [of P.L. 93-559]. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new sections:

Sec. 662. Limitation on Intelligence Activities.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

PRIVACY ACT OF 1974

[88 Stat. 1896, P.L. 93-579, December 31, 1974, 5 U.S.C.A. 552a.]

5 U.S.C.A. 552a. Records maintained on individuals.

(j) General Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553(b)(1), (2), and (3), (c), and (e) of this title,[1] to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i)[2] if the system of records is—

(1) maintained by the Central Intelligence Agency; or . . . .

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[1] Section 553 of title 5 of the United States Code prescribes certain requirements for rulemaking by agencies generally.

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[2] Thus the requirements of section 552a. of title 5 from which systems of records maintained by CIA may not be exempted under clause (1) of subsection 552a.(j) are those which

(a) prescribe the conditions pursuant to which records pertaining to an individual may be disclosed to a person or agency (552a.(b));

(b) require that an accurate accounting of certain specified details of any such disclosures be maintained (552a.(c)(1));

(c) require that such accountings be maintained for five years or for the life of the record, whichever is longer (552a.(c)(2));

(d) require agencies to publish annual notices in the *Federal Register* of the existence and character of the system of records maintained, which notice shall include (552a.(e)(4)(A) through (F)):

the name and location of the system;

the categories of individuals on whom records are maintained in the system;

the categories of records maintained in the system;

each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(Footnote 2—Continued)

the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records; and

the title and business address of the agency official who is responsible for the system of records.

(e) require agencies to make reasonable efforts to assure that records about an individual are accurate, complete, timely and relevant for agency purposes before disseminating any such record to any person other than an agency (552a.(e)(6));

(f) prohibit agencies from maintaining any records describing how any individual exercises First Amendment rights, unless authorized by statute or by the individual or unless pertinent to and within the scope of authorized law enforcement activity (552a.(e)(7));

(g) require agencies to establish rules of conduct and instructions for persons involved in the design, development, operation and maintenance of systems of records or in maintaining any record (552a.(e)(9));

(h) require agencies to establish administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual on whom information is maintained (552a.(e)(10));

(i) request agencies to publish in the *Federal Register,* at least 30 days in advance of publishing in the *Federal Register,* the notice of the routine use of the records contained in the records system and the categories of users and the purpose of such use, notice of a new use or intended use and to provide an opportunity for interested persons to submit written data, views or arguments (552a.(e)(11); and

(j) establish criminal penalties for certain specified actions concerning certain records and systems of records (552a.(i)).

PART VII

extracts from

EXECUTIVE ORDERS HAVING SPECIAL APPLICATION TO THE CENTRAL INTELLIGENCE AGENCY OR CIA ACTIVITIES

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CONTENTS—Executive Orders Having Special Application to CIA [1]

[1] In addition to the executive orders listed in this table of contents, executive orders having special application to CIA are set out at PART II, Footnote 4, and at PARTS III and IV. Certain others, which have been repealed or have become inoperative, are referred to in Footnotes in PARTS I and II.

Executive Order 10450, as amended
SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

(3 C.F.R., 1949-1953 Comp., p. 936, April 27, 1953, 5 U.S.C.A. 7311 Note)[1]

A 1950 statute[2] authorizes the head of certain specified departments and agencies, *not* including the National Security Council or the Central Intelligence Agency, to suspend an employee without pay and to terminate his employment in the interests of national security. Notwithstanding the provision of 5 U.S.C.A. 7501[3] or of any other law, such department and agency heads "may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension." Within 30 days of being so notified, the employee is entitled to submit "statements or affidavits to show why he should be restored to duty." Subject to certain prescribed procedural requirements and "after such investigation and review as he considers necessary" the agency head may remove the suspended employee whenever "he determines that removal is necessary or advisable in the interests of national security."[4]

The Act shall apply to "such other agency of the Government of the United States as the President designates in the best interests

[1] Executive Order 10450 has been amended four times, all within the first year and a half of the Order's issuance: E.O. 10491, 3 C.F.R., 1949-1953 Comp., p. 973, October 13, 1953; E.O. 10531, 3 C.F.R., 1954-1958 Comp., p. 193, May 27, 1954; E.O. 10548, 3 C.F.R., 1954-1958 Comp., p. 200, August 2, 1954; E.O. 10550, 3 C.F.R., 1954-1958 Comp., p. 200, August 5, 1954.

[2] 64 Stat. 476, P.L. 81-733, August 26, 1950, 5 U.S.C.A. 7531, 7532.

[3] Section 7501 of Title 5 provides that individuals in the competitive services may be removed or suspended without pay "only for such cause as will promote the efficiency of the service" and establishes procedures for such actions. CIA employees are not in the competitive service. See Footnote 18, PART I.

[4] 5 U.S.C.A. 7532.

of national security." [5] A 1953 Executive Order, No. 10450, so designated, in addition to those specified in the Act [6] and in Executive Order 10237,[7] "all other departments and agencies of the Government."

Notwithstanding that the 1950 statute and Executive Order 10450 authorize termination of employment "in the interests of national security," such authority in no way diminishes or affects the authority of the Director under section 102(c) of the National Security Act to terminate employment "whenever he deems such termination necessary or advisable in the interests of the United States." The latter, it will be noted, is in broader terms and requires no procedural steps. As such it is the more useful authority by which the Director may discharge his responsibility under section 102(d)(3) of the National Security Act to protect intelligence sources and methods from unauthorized disclosure. As a matter of policy, the Agency terminates the employment of individuals only under the authority of section 102(c) of the National Security Act, and Executive Order 10450 is not utilized for the purpose. Also as a matter of policy, Agency regulations provide procedural safeguards in all termination actions except any in which the Director deems it necessary or advisable in the interests of the United States not to apply such procedures.

The Order accomplished another far-reaching action—it established a security clearance program for Government employees. Under the Order each agency head is to establish and maintain an effective program to insure that the "employment and retention in employment" of any individual is "clearly consistent with the interests of national security." [8] The appointment of every employee of the Government "shall be made subject to investigation," the scope of the investigation to be determined by the degree of adverse effect on the national security the holder of the position could cause. If the holder could cause a "material" adverse effect, the position is a "sensitive" position and the investigation required

[5] 5 U.S.C.A. 7531 (9).

[6] 5 U.S.C.A. 7531.

[7] Executive Order 10237 (3 C.F.R., 1949-1953 Comp., p. 748, April 27, 1951) had designated The Panama Canal and the Panama Railroad Company.

[8] E.O. 10450, section 2.

is a "full field investigation." (All CIA positions have been designated as sensitive positions.) For all other positions the investigation required is at least a national agency check and "written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended." But the "Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States." [9] When information is developed which indicates that retention in employment of any employee may not be clearly consistent with the interests of the national security, the matter is to be investigated and the employee is subject to suspension and termination.[10]

Investigations under the Order are to be designed to develop information as to whether the employment or retention in employment of the individual is clearly consistent with the interests of the national security. The Order then specifies the information to be developed, which essentially is any information concerning the individual's loyalty, security or suitability for employment, including information as to character, habits, morals, associations and reputation.[11] The breadth of the information to be developed is clear that agency heads are to take into account information which pertains to matters additional to those which would indicate disloyalty, treason, espionage, or other action patently contrary to the security interests of the United States. The Order means that the character, habits, morals, associations and reputation of a person unquestionably loyal to the United States and who has not committed treason or espionage against the United States, nevertheless could be the basis for a determination that his employment or continued employment is contrary to the security interests of the United States.

Under section 8(b) of the Order, the investigation of persons primarily is the responsibility of the Civil Service Commission "except in cases in which the head of a department or agency assumes

[9] *Ibid.*, section 3.

[10] *Ibid.*, sections 5 and 6.

[11] *Ibid.*, section 8.

that responsibility pursuant to law or by agreement with the Commission." In accordance with this provision, the CIA conducts its own investigations.

The Order also specified that the Civil Service Commission, "with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of" the implementation of the Order by the departments and agencies for the purpose of determining deficiencies in the security programs which tend to weaken national security, and tendencies in such programs "to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order." The Commission also is to report to the National Security Council at least semiannually on the results of its study and the means recommended to correct any such deficiencies or tendencies.[12]

In 1966, at the direction of the President, an inter-agency committee on which CIA was represented, conducted a study of the use of the polygraph in the executive branch and reported thereon to the President. A part of the study concerned the use of the polygraph in personnel investigations. In consequence of the study, the Civil Service Commission has issued instructions authorizing certain departments and agencies to use the polygraph in such investigations in connection with applicants for and appointees to critical-sensitive positions in the competitive service, and prescribing guidelines and standards for such use. Use is authorized by an "executive department or agency which has a highly sensitive intelligence or counterintelligence mission directly affecting the national security (e.g., a mission approaching the sensitivity of that of the Central Intelligence Agency)." [13] CIA positions are not in the competitive service (see Footnote 18, PART I) and the Civil Service instructions therefore are not applicable to CIA. Agency policy on the use of the polygraph nevertheless is based on the instructions.

[12] *Ibid.*, subsection 14(a).

[13] Federal Personnel Manual, Chapter 736, Appendix D (March 3, 1969).

Executive Order 10501, as amended
SAFEGUARDING OFFICIAL INFORMATION IN THE INTERESTS OF THE DEFENSE OF THE UNITED STATES

(3 C.F.R., 1949-1953 Comp., p. 979, November 5, 1953;
3 C.F.R. (Revised as of January 1, 1970), p. 280)

Information affecting the national defense is so designated, and is given security classification and safeguarded, under the authority of Executive Order 10501, as amended. The purposes of the Order are stated in the preamble: it is "essential that the citizens of the United States be informed concerning the activities of their government;" the interests of national defense "require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by *covert* or *overt means, including espionage* as well as military action" (emphasis supplied); and it is essential that "certain official information affecting the national defense be protected uniformally against unauthorized disclosure". And the President issued the Order because he deemed "such action necessary in the best interests of the national security".

Under section 2 of the Order, as originally issued, the authority "for original classification of information or material" was conferred on the various departments and agencies on the basis of their degree of responsibility for national defense. Thus:

1. Departments and agencies "having no direct responsibility for national defense" had no authority for original classification of information or material.

2. Those having "partial but not primary" national defense responsibility were given authority for original classification, but it was to be exercised "only by the head of the department or agency, without delegation."

3. All other departments and agencies likewise were given such authority, to "be exercised only by responsible officers or employees, who shall be specifically designated for this purpose. Heads of such departments and agencies shall limit the delegation of authority to classify as severely as is consistent with the orderly and expeditious transaction of Government business."

An amendment to section 2 in 1961 [1] suggests that there had been confusion within the departments and agencies in determining the category of agencies established by section 2 into which each fit. It suggests also that the original Order was considered too broad. This 1961 amendment continued the concept of agencies having "primary responsibility for matters pertaining to national defense", those having "partial but not primary responsibility", and those having no direct responsibility. It also continued the original restrictions on the authority of agency heads to delegate the authority to classify. But the amended Order listed the agencies and departments falling into each of the first two categories and provided that any "agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order". The National Security Council, the Central Intelligence Agency and the President's Board of Consultants on Foreign Intelligence Activities (see PART IV) were listed in the 1961 amendment among the agencies "having primary responsibility for matters pertaining to national defense".

Amendments to the Order in subsequent years have added and deleted agencies from the two lists. The President's Foreign Intelligence Advisory Board, which was established on May 4, 1961 (see PART IV, Footnote 2), was added to the list of those having primary responsibility for national defense by an amendment of January 12, 1962. [2]

A second amendment in 1961 authorized agencies to establish special requirements concerning communications intelligence.

> Nothing in this order shall prohibit any special requirements that the originating agency or other appropriate authority may impose as to communications intelligence, cryptography, and matters related thereto.[3]

[1] Executive Order 10901, 3 C.F.R., 1959-1963 Comp., p. 432, January 9, 1961.

[2] Executive Order 10985, 3 C.F.R., 1959-1963 Comp., p. 518, January 12, 1962.

[3] Section 5 of Executive Order 10964, 3 C.F.R., 1959-1963 Comp., p. 486, September 20, 1961.

The Order, as amended (there have been several amendments not mentioned above), was republished as of January 1, 1970.[4] Departments and agencies listed in the amended Order as having primary responsibility for national defense are:

The White House Office
President's Science Advisory Committee
Bureau of the Budget
Council of Economic Advisers
National Security Council
Central Intelligence Agency
Department of State
Department of the Treasury
Department of Defense
Department of the Army
Department of the Navy
Department of the Air Force
Department of Justice
Department of Commerce
Department of Labor
Department of Transportation
Atomic Energy Commission
Canal Zone Government
Federal Communications Commission
Federal Radiation Council
General Services Administration
Interstate Commerce Commission
National Aeronautics and Space Administration
National Aeronautics and Space Council
United States Civil Service Commission
United States Information Agency
Agency for International Development
Office of Emergency Planning
Peace Corps
President's Foreign Intelligence Advisory Board
United States Arms Control and Disarmament Agency
Export-Import Bank of Washington
Office of Science and Technology
The Special Representative for Trade Negotiations

[4] Executive Order 10501, as amended (republished), 3 C.F.R. (Revised as of January 1, 1970), p. 280.

Departments and agencies listed as having partial but not primary responsibility are:

Post Office Department
Department of the Interior
Department of Agriculture
Department of Health, Education, and Welfare
Civil Aeronautics Board
Federal Maritime Commission
Federal Power Commission
National Science Foundation
Panama Canal Company
Renegotiation Board
Small Business Administration
Tennessee Valley Authority

Two principles for the control of information fundamental to CIA requirements and practices are incorporated in the Order—the "need-to-know principle" and the "third-agency rule." Section 7 provides that knowledge or possession of classified defense information shall be permitted "only to persons whose official duties require such access in the interest of promoting national defense". Section 7(c) prohibits the dissemination of "classified defense information originating in another department or agency" to an agency "outside the receiving department or agency without the consent of the originating department or agency". The only exception to this rule is that dissemination may be made under the authority of section 102 of the National Security Act. Section 102(d) of that Act is the provision which requires CIA, under the direction of the National Security Council, "to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities".

The Order of course carries no criminal sanction but it ties in closely with the espionage laws (sections 793, 794 and 798, Title 18, United States Code), which do provide criminal penalties. The prohibitions of 793 and 794 apply with respect to information affecting the national defense and 798 applies to "any classified information" concerning certain intelligence communications activities.

Executive Order 10805
DESIGNATING THE CENTRAL INTELLIGENCE AGENCY AS EXCEPTED FROM CERTAIN PROVISIONS OF THE GOVERNMENT EMPLOYEES TRAINING ACT

(3 C.F.R., 1959-1963 Comp., p. 328, February 18, 1959)

The Government Employees Training Act,[1] which repealed that section of the CIA Act which authorized a training program for CIA (section 4),[2] established a comprehensive training program for government employees, with broad regulatory and coordinating authority in the Civil Service Commission. The Act also authorized the President, "at any time in the public interest, [to] . . . except an agency or part thereof, or an employee or group or class of employees therein" from the Act.[3]

The President, by section 1 of Executive Order 10805, designated the CIA as excepted from the following described provisions of the Government Employees Training Act:

(a) Section 2(4), 6, 9(b)(1), 11, 12, 15, 16 and 18.

(b) The last sentence of section 5.

(c) That part of section 7 which reads 'shall conform, on or after the effective date of the regulations prescribed by the Commission under section 6 of this Act, to the principles, standards, and related requirements contained in such regulations then current,'.

(d) That part of section 10 which reads 'in accordance with regulations issued by the Commission under authority of section 6(a)(8).'

The provisions of the Act from which CIA thus is excepted by the Executive Order are:

1. Section 2(4)[4] provides that the "Civil Service Commission has the responsibility and authority for effective promotion and

[1] 72 Stat. 327, P.L. 85-507, July 7, 1958, 5 U.S.C.A. 4101 et seq.

[2] See Footnote 12, PART II.

[3] 5 U.S.C.A. 4102(b)(1).

[4] 5 U.S.C.A. 4117.

coordination of the training programs under the" Act and for training operations thereunder, "subject to supervision and control by the President and review by Congress."

2. Section 6[5] authorizes the Commission to prescribe regulations "containing the principles, standards and related requirements for the programs and plans thereunder, for the training of employees under the" Act and providing the information necessary to enable the President and Congress to discharge their duties and responsibilities for supervision, control and review of training programs authorized by the Act.

3. Section 9(b)(1)[6] requires that the programs of agencies "by, in, and through non-government facilities" are to "provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency".

4. Section 11[7] requires that no employee may be assigned to training in non-government facilities under the Act unless he first enters into a written agreement that he will continue in the service of his agency for a period of time at least equal to three times the length of the period of training, unless he is involuntarily separated, and that, if he is voluntarily separated, he will pay to the government the amount of the expenses incurred by the government in connection with his training. The section further provides that an employee who fails to complete the requisite period of service with his agency because he enters the service of another agency of the government "may not be required to pay the training expenses unless the head of the agency that authorized the training notifies the employee before the effective date of his entrance into the service of the other agency that payment will be required". Section 11 also provides for setoff of amounts owed by reason of his failure to fulfill his agreement against accrued salary, amount of retirement credit, "or other amount due the employee from the Government". And finally, the head of the agency concerned may waive "in whole or in part" the right of recovery "if it is shown that the recovery

[5] 5 U.S.C.A. 4118.

[6] 5 U.S.C.A. 4105(b)(1).

[7] 5 U.S.C.A. 4108.

would be against equity and good conscience or against the public interest".

5. Section 12 [8] imposes limits as to the number of man-years of training in non-Government facilities which each agency may provide in each fiscal year. It also prohibits training in non-Government facilities for certain new employees and limits the amount of such training which may be given to any employee.

6. Section 15 [9] authorizes the Commission to review the operations, activities, transactions and plans of each agency under the Act in order to determine whether they are in compliance with the Act and the Commission's regulations thereunder.

7. Section 16 [10] authorizes the Commission to collect information with respect to training programs, plans, and methods in and outside the Government and, upon request, to "make such information available to an agency and to Congress."

8. Section 18 [11] directs each agency to prepare and submit to the Commission annual reports on its programs and plans under the Act.

9. Section 5 [12] directs the head of each agency, at least once every three years, to "review the needs and requirements of the agency for the training of employees under its jurisdiction." The last sentence of section 5 provides: "Information obtained or developed in a review shall be made available to the Commission at its request."

10. Section 7 [13] directs each agency head to establish, operate, and maintain a program, or programs, and a plan or plans thereunder, in accordance with the Act, for the training of employees in "order to increase economy and efficiency in the operations of the agency and to raise the standards of performance by employees of their official duties to the maximum possible level of proficiency."

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[8] 5 U.S.C.A. 4106.

[9] 5 U.S.C.A. 4114.

[10] 5 U.S.C.A. 4115.

[11] 5 U.S.C.A. 4113(b).

[12] 5 U.S.C.A. 4113(a).

[13] 5 U.S.C.A. 4103.

Each such program and plan "shall conform to the principles, standards, and related requirements contained in the regulations prescribed under" section 6 of the Act.

11. Section 10[14] authorizes the head of each agency in accordance with regulations issued by the Commission under authority of section 6(a)(8) to pay the costs of training provided under the Act, including the salary and travel and transportation expenses of each employee assigned to such training, and tuition, books and related expenses.

[14] 5 U.S.C.A. 4109(a).

Executive Order 10987
AGENCY SYSTEMS FOR APPEALS FROM ADVERSE ACTION

(3 C.F.R., 1959-1963 Comp., p. 519, January 17, 1962)

Executive Order 10987 directs the head of each agency and department, in accordance with the Order and with regulations issued thereunder by the Civil Service Commission, to establish "a system for the reconsideration of administrative decisions to take adverse action against employees". Within the limitations of the Order and the regulations issued thereunder each agency and department "is authorized to develop such agency appeals procedures as may be appropriate to its own organizational requirements." Among the principles with which each agency's system is to comply is:

> The employee shall have the right to be accompanied, represented and advised by a representative of his own choosing in presenting his appeal.

The Order "shall not apply to the Central Intelligence Agency. . . ." By regulation, the Agency affords all employees the right to appeal any grievance to the Inspector General.

Executive Order 11491
LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

(3 C.F.R., 1969 Comp., p. 191, October 29, 1969)[1]

Executive Order 11491, which revokes an earlier Order[2] in the same field, establishes the policy and rules for the relationship of the government, as employer, with labor organizations. It affords each employee of the executive branch the right "to form, join, and assist a labor organization or to refrain from any such activity". The "Order (except section 22) does not apply to . . . the Central Intelligence Agency." A similar exemption was provided in the earlier Order.

Section 22 requires each agency head to "extend to all employees in the competitive civil service" certain rights of appeal in adverse action cases. Since CIA employees are not in the competitive civil service,[3] the Order has no application as to CIA.

By regulation, the Agency affords all employees the right to appeal any grievance to the Inspector General.

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[1] To accomplish the chronological order in which executive orders appear in PART VII, the location of Executive Order 11491 in PART VII is based on the date the executive order which Executive Order 11491 repeals was issued, January 17, 1962. See Footnote 2.

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[2] Executive Order 10988, 3 C.F.R., 1959-1963 Comp., p. 521, January 17, 1962.

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[3] See Footnote 18 of PART I.

Executive Order 11456
PROVIDING FOR A SPECIAL ASSISTANT TO THE PRESIDENT FOR LIAISON WITH FORMER PRESIDENTS

(3 C.F.R., 1969 Comp., p. 107, February 14, 1969)

Soon after his inauguration, President Nixon took action to establish and maintain a formal channel of communications with all living former Presidents. The objective was to be in a position to keep former Presidents abreast of such developments as the President might desire, and to permit the President to avail himself of the counsel and advice of former Presidents with respect to major matters, "particularly of a national security nature, currently confronting the President." To accomplish this purpose, the President issued Executive Order 11456, establishing, in the White House Office, a Special Assistant to the President for Liaison with Former Presidents. The Special Assistant is charged with:

1. keeping former Presidents currently informed of "the major aspects of such principal international and domestic problems as the President directs;"

2. arranging "to secure from such former Presidents, or any of them, and [to] convey to the President, their views on such issues as the President may designate;" and

3. arranging to secure and convey to the President such views of any of the former Presidents as they may wish to communicate to the President on any issue of current interest or concern.

The Executive Order further directs certain named officials, including the Director of the Central Intelligence Agency and the Executive Secretary of the National Security Council, to designate a member of their staffs as a point of contact for the Special Assistant.

> The Special Assistant may call upon such designated staff members to supply information and render such other appropriate assistance as he may require in carrying out his duties under . . . this Order.

PART VIII

COMPTROLLER GENERAL DECISIONS SPECIFICALLY APPLICABLE TO THE CENTRAL INTELLIGENCE AGENCY

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DECISIONS OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Digests or summaries of the formal decisions of the Comptroller General of the United States on questions referred to him by the CIA or CIA representatives, or arising from Agency activities, are set out below. These include the Comptroller General's comments to the Bureau of the Budget concerning the legislation which became the Central Intelligence Agency Act of 1949 (B-74158 (unpublished), March 12, 1948). The Comptroller General's decision concerning the propriety of the Director's delegating to the Deputy Director the authority to take final action regarding the expenditure of confidential funds (41 Comp. Gen. 429, January 2, 1962) is included in full text. None of these is known to have been formally rescinded, but the application or effect of any of them may have been negated or modified by subsequent opinions or legislation. In some instances, the summary indicates subsequent repeal of the legislation involved.

B-70827 (unpublished), November 10, 1947

New employees were recruited from their places of residence in the United States for duty in the United States at posts other than Washington, D.C. Pending assignment of such employees to their permanent duty posts they reported to duty in Washington, traveling at their own expense, where they performed duties, other than training duties, for a matter of weeks. In these circumstances, Washington is to be regarded as the post of first assignment and subsequent travel expenses to their first posts of permanent assignment in the United States may be paid.

B-72680 (unpublished), March 10, 1948

The allowances provided by Bureau of the Budget Circular No. A-8, Revised, for employees who are married are payable only if the employee's wife is living with him at his post of assignment, since the allowances are intended to equalize the cost of living of the post of assignment with that of Washngton, D. C.

B-74185 (unpublished), March 12, 1948

By this communication, the Comptroller General gave his approval to draft legislation which thereafter became the CIA Act of 1949. He commented specifically on sections 3, 5 and 8 of the CIA Act. Those sections, he noted,

> provide for the granting of much wider authority than I would ordinarily recommend for Government agencies generally, [but] the purposes sought to be obtained by the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein. The importance of obtaining, correlating, and disseminating to proper agencies of the Government intelligence relating to national security under present international conditions cannot be overlooked. In an atomic age, where the act of an unfriendly power might, in a few short hours, destroy, or seriously damage the security, if not the existence of the nation itself, it becomes of vital importance to secure, in every practicable way, intelligence affecting its security. The necessity for secrecy in such matters is apparent and the Congress apparently recognized this fully in that it provided in section 102(d)(3) of Public Law 253 [the National Security Act of 1947], that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure. Under those conditions I do not feel called upon to object to the proposals advanced in those sections.

B-90432 (unpublished), November 15, 1949

The Agency is exempt from the Classification Act of 1949 (see page 114, PART VI), which, among other things, authorizes the establishment of positions in grades GS-16, 17 and 18, and places limitations on the numbers of such positions in the Government. Section 9 (now repealed) of the CIA Act authorized the Director to establish three positions in the professional and scientific field and, with the approval of the Civil Service Commission and within certain specified limits, to fix their rates of compensation, and section 10(a) (now section 8(a)) provides that "notwithstanding any other provisions of law" CIA funds "may be expended for purposes necessary to carry out" CIA functions, including personal services. It was held that the Director accordingly may

establish positions, and set compensation rates, in the professional and scientific field within the limits of section 9. For positions in other fields there would appear to be no objection to the establishment of positions, with salaries and responsibilities comparable to those provided in General Schedule grades 16, 17 and 18.

B-91916 (unpublished), January 19, 1950

Section 10(b) (now section 8(b)) of the CIA Act authorizes the expenditure of funds "without regard to the provisions of law and regulations relating to the expenditure of Government funds" and, with respect to employees assigned to permanent-duty posts outside the continental United States, section 5(a) (now section 4) authorizes the Agency to pay "the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty." Based on these provisions, the costs of inoculating members of the family of an Agency employee accompanying the employee to or from his permanent-duty post outside the continental United States may be paid.

29 Comp. Gen. 317, February 1, 1950

A CIA employee was transferred to Hawaii from Washington, D.C., under travel orders issued prior to the enactment of the CIA Act. The relevant Executive Order (No. 9805) limited temporary storage to 60 days. The Comptroller General ruled that costs for storage in excess of 60 days could be paid to the storage company, which had acted in good faith and without knowledge of the Executive Order, but must be recovered from the employee since neither "the General Accounting Office nor the Central Intelligence Agency is vested with authority to waive the 60-day storage limitation period prescribed in the applicable Executive Order". The Comptroller General noted that travel orders issued on or after the effective date of the CIA Act would be governed by that Act.

B-93365 (unpublished), March 16, 1950

Under the authority in section 5(a) (now section 4) of the CIA Act to grant home leave to CIA employees "upon completion of two years' continuous service abroad", only continuous employment in the CIA while under an assignment abroad is required, and periods of consultation service in the United States under proper orders need not be considered as constituting a break in

the continuity of service abroad and may be counted as part of the two years' continuous service. Periods of annual or sick leave spent in the United States also would not constitute a break in the continuity of service abroad, but should not be counted as service abroad.

B-105707 (unpublished), October 19, 1951

The retired pay of a retired Admiral who is hired by the CIA as a consultant, on a fee basis, for advisory services to be performed infrequently need not be reduced because of the Economy Act of 1932, which prohibits any person "holding a civilian office or position, appointive or elective," from also receiving the retired pay of a commissioned officer in excess of certain amounts.

31 Comp. Gen. 191, November 21, 1951

Retroactive pay increases by the Central Intelligence Agency would not be expenditures "necessary to carry out its functions" within the meaning of section 10 (now section 8) of the CIA Act, as amended, and therefore would be subject to legal objection. The Comptroller General noted the "long established and recognized rule that retroactive salary increases may be granted only by express authority of the Congress and may not otherwise be granted administratively." In enacting section 10, the Congress had not "comtemplated a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency." (But see, at page 198 of this PART, 44 Comp. Gen. 89, August 20, 1964, upholding pay increases under circumstances which did not exist in 1951.)

32 Comp. Gen. 89, August 12, 1952

Under the dual compensation law, a Foreign Service officer retired for age may not be re-employed by another agency of the Government. A Foreign Service officer retired for reasons other than age may be so re-employed, but he may not continue to receive his annuity concurrently with the salary of his full-time position. The Comptroller General's ruling, insofar as it concerns the retention of the annuity of a Foreign Service officer retired for disability and re-employed by another agency, was issued in the face of a Court of Claims decisions to the contrary (*Brunswick v. United States*, 90 Ct. Cl. 285), since such decisions "are not binding

upon this Office in the absence of affirmation by the Supreme Court of the United States."

B-124146 (unpublished), July 7, 1955

Retired commissioned officers were retained by CIA, under contract, to furnish confidential information and services for an annual fee in accordance with Agency requirements. The Agency did not supervise the work, provide space or facilities, or prescribe hours of work. Employment in these circumstances does not involve the holding of a civilian office or civilian compensation within the meaning of the dual compensation statutes.

B-127069 (unpublished), April 12, 1956

Payment of cash awards to Agency personnel for participating in a language resources program may not be authorized under the Government Employees' Incentive Awards Act (now 5 U.S.C.A. 4051 et seq.), but may be authorized under section 10(a) and (b) (now section 8(a) and (b)) of the CIA Act.

36 Comp. Gen. 116, August 14, 1956

The home leave travel provision of the CIA Act of 1949, which authorizes payment of travel expenses of the family of an employee "accompanying him on authorized home leave", does not require the joint travel of the dependents and the employee but only that the dependents travel after the issuance of travel orders, and after the date the employee becomes eligible for home leave.

B-128819 (unpublished), September 10, 1956

An Agency contracting officer believed the price stated in a contractor's bid was in error. By telephone he requested the contractor to verify the figure, which the latter did. Upon receipt of the award of the contract, the contractor discovered the error and requested to be paid the amount submitted by the next lowest bidder. The Agency rejected the claim and, when the contractor appealed, the Director requested the views of the Comptroller General. Acceptance of the bid in these circumstances, in the view of the Comptroller General, does not constitute a contract. It is the duty of the contracting officer to also furnish "the bidder sufficient facts to put him on notice of the mistake surmised, if the subsequent acceptance of the bid is to result in a contract." The amount claimed should be paid.

B-129369 (unpublished), October 19, 1956

CIA, after inviting bids for furnishing certain forms, thereafter rejected all bids and decided "to readvertise the Government's requirements on the basis of revised specifications." The Comptroller General rejected the protest of a bidder.

> An invitation for bids such as here involved does not impose upon the Government any binding obligation to accept any bid where the purchasing agency determines that the public interest would be best served by rejection of all bids and readvertisement of the needs to be met. The duty of making such a determination necessarily lies with the contracting officials of the Government. In the absence of clear proof of wrongful abuse of any discretionary powers in that regard—and no such proof is present in the instant matter—we cannot undertake to interfere with the action based upon such a determination.

38 Comp. Gen. 869, June 24, 1959

This decision answers a series of specific questions concerning leave and pay arising under Executive Order 10825, June 12, 1959, which Order excused employees from duty on July 3, 1959, a Friday.

B-140877 (unpublished), December 1, 1959

A former Agency employee filed claim with the Comptroller General for the difference in pay between the GS-16 at which he was compensated by the Agency and the GS-17 and GS-18 rates for periods in which he performed duties of positions which carried these grades. He also requested compound interest. The former employee contended that the GS-17 and GS-18 positions were properly classified and allocated, and existed during the period he performed the duties thereof. He contended also that the Agency "by its regulations, rules and actions adopted the principles of the Classification Act of 1949, as amended", and that it had failed to abide by the provisions of what is now 5 U.S.C.A. 3341, concerning the detailing of employees. The Comptroller General disallowed the claim. He noted that persons holding supergrade rank in CIA "do not do so as the result of current position assignment but because they have been evaluated as best qualified for exercising the managerial and technical responsibilities required at those levels . . . . We are not aware of any rule or regulation of the Agency that mandatorily requires ap-

plication of the principles of the Classification Act of 1949 to such cases." (See in this connection, 44 Comp. Gen. 89, August 20, 1964, at page 198 of this PART.) Further, because of the authority in section 8 of the CIA act to expend appropriations for personal services "notwithstanding any other provisions of law," the Agency is not required to follow 5 U.S.C.A. 3341 concerning the detailing of employees.

B-142252 (unpublished), April 1, 1960

An Agency regulation specified a weight limitation on the amount of household effects which may be stored or transported to an employee's new post of duty abroad to which he is being transferred. Another regulation authorized a greater amount which may be transported in connection with an employee's reassignment from a post of duty abroad to one in the United States. Return travel orders in this instance authorized the shipment of the smaller amount only. Because the travel regulations then in effect were unclear and in view of the Agency's stated intentions to clarify them by revision, shipment of an amount within the return travel authorization was approved by the Comptroller General for payment.

B-143437 (unpublished), July 21, 1960

New special equipment utilized by Agency employees required normal or corrected-to-normal vision, and could not be used effectively while the operator was wearing conventional glasses. Appropriated funds may be used to purchase the initial set of contact lenses for those highly trained specialists who were fully qualified when assigned originally to their specialized duties, before the introduction of the new equipment; but lenses may not be purchased for new employees who are engaged to be trained for such work. As to the latter workers, contact lenses would appear to be equipment that new employees who require vision correctives could reasonably be required to furnish as part of the personal equipment necessary to enable them to qualify for, and perform the regular duties of, the position for which their services were engaged.

40 Comp. Gen. 53, July 26, 1960

Travel of CIA employees for the purpose of pick up or delivery at ports of their privately owned automobiles incident to transfers to and from overseas posts of duty is not travel on official business

(when the travel is not a part of the travel for changes of station), and absences for that purpose must be charged to annual leave. But proper costs of transporting such automobiles may be paid under section 4 of the CIA Act. Moreover, a standard allowance, in lieu of such costs, may not be authorized in the absence of specific statutory authority.

B-144533 (unpublished), December 29, 1960

Certain CIA employees had transferred to the Agency from the Government Printing Office in 1957 and, under a CIA-GPO agreement effecting the transfer, continued to be paid under GPO wage scales, which included night differential pay. (This agreement took the form of a letter from the Director to the Public Printer (November 19, 1956), and a letter from the Public Printer to the Director (December 5, 1956), both then approved by the Joint Congressional Committee on Printing. Commitments to the employees who transferred were made by the Agency by means of a series of briefing sessions with groups of employees who were considering transfer, as recorded in a CIA memorandum for the record of January 9, 1957.) Later in 1957 two of them were promoted to and received the pay of a GS grade. As GS employees they continued to receive night differential pay. In ruling on the question of night differential pay, the Comptroller General noted that it was not necessary to determine the applicability of the Federal Employees Pay Act of 1945 to CIA, since CIA had administratively adopted the provisions of that Act. He held that there was no authority under that Act for the payment of night differential for certain hours of the day during some of which these employees had been on duty. Night differential amounts paid the employees for such hours therefore should be collected from them.

B-145031 (unpublished), April 7, 1961

A contractor protested to the Comptroller General against the award by CIA of a negotiated contract for power equipment for the CIA installation at Langley, Virginia, to a competitor. The Comptroller General felt he had no basis to question the Agency's administrative decision to negotiate the contract, based on the Agency's authority, in section 3(a) of the CIA Act, to exercise the authorities of section 2(c)(10) of the Armed Services Procurement Act of 1947. Section 2(c)(10) authorizes negotiated contracts when it is determined to be impracticable to obtain competition. The Agency had

determined, based on information available to it concerning the protesting contractor's product and that of its only competitor, that the competitor met its requirements, including the critical delivery and installation deadlines, while the protesting firm did not. The Comptroller General declined to substitute his judgment for that of the CIA contracting officials, in the absence of a showing of bad faith or a lack of substantial basis for the CIA determination, holding that the determination regarding the qualifications of a proposed contractor is a function primarily of the contracting officials concerned.

41 Comp. Gen. 429, January 2, 1962

To the Director, Central Intelligence Agency, January 2, 1962:

We refer to your letter of December 12, 1961, regarding the propriety of your delegating to your Deputy Director the exercise of certain functions involving the expenditure of funds which by law are vested in the Director of the Central Intelligence Agency.

As you say, the National Security Act of 1947, 61 Stat. 495, 497, 50 U.S.C. 403, which established the office of the Director of the Central Intelligence, did not provide for a Deputy Director. Subsequently, the Central Intelligence Agency Act of 1949, 63 Stat. 208, 50 U.S.C. 403a, was enacted for the purpose of granting the Central Intelligence Agency necessary authority for its proper and efficient administration. That act contains several provisions involving the expenditure of funds. It vests action thereon in the Director. Section 3(b) of that act, 50 U.S.C. 403c(b), defines the term 'Agency head' as including 'Deputy Director.' It is significant too that section 6(a) of the Executive Pay Act of 1949, 63 Stat. 880, 881, 50 U.S.C. 403 note, likewise refers to the Deputy Director of Central Intelligence and sets his basic compensation. On April 4, 1953, the National Security Act of 1947 was amended (Public Law 15, 83d Congress, 67 Stat. 19, 50 U.S.C. 403) to provide for the statutory office of a Deputy Director of Central Intelligence who, like the Director, is appointed by the President by and with the advice and consent of the Senate.

You point out that 'it has been the practice in those cases where statutes granted authorization to the Director for him personally to take the actions specified.' You believe that, with the growing complexity of the activities of your Agency, it

would be in the interest of efficient and orderly administration of the functions vested by law in the head of the Agency to have, except when the law specifically precludes delegation, certain authorities exercised by the Deputy Director. Therefore, if we do not object you intend to prescribe certain areas in which the Deputy Director of Central Intelligence will take final action in connection with the expenditure of funds under the National Security and Central Intelligence Agency Acts, including the certification of expenditures provided in section 8 of the 1949 act, as amended, 50 U.S.C. 403j.

Section 102 of the National Security Act of 1947 as amended April 4, 1953, 50 U.S.C. 403, provides, in part, as follows:

> (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof, and with a Deputy Director of Central Intelligence who shall act for, and exercise the powers of, the Director during his absence or disability. The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate * * *.
>
> (b) (1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then—
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> * * * * * * *
>
> (B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, * * *.

Section 8(b) of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403j(b), provides:

> (b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

Our Office has held that notwithstanding the absence of specific statutory authority for an Assistant Secretary of a department to act in lieu of the head of the department in

matters of discretion vested by law in such head, the title and nature of the position of such Assistant Secretary is such as to authorize him to assist and to act in lieu of the head in matters requiring his attention or discretion when authorized by him to so do. 20 Comp. Gen. 27, *id.* 797; 29 *id.* 151.

Section 102(a), above, does not set forth the duties of the Deputy Director of Central Intelligence or provide specifically that he shall perform such duties as the Director may prescribe. He is, however, authorized to 'act for, and exercise the powers of, the Director during his absence or disability.' We do not construe such authorization as limiting the otherwise proper exercise by the Deputy Director of duties vested in the Director. The authorization to act as Director would seem more properly to be construed as limiting his right to function as 'Acting Director.' C*f.* 5 U.S.C. 4. We have no reason to doubt that the Congress, in providing for a Deputy Director in the 1953 amendment, was well aware of the general rule in our decisions above referred to, and had the Congress intended to restrict the assignment of duties by the Director to his Deputy Director it would have so stated. Moreover, in H. Rept. No. 219, by the House Committee on Armed Services, on S. 1110, enacted as Public Law 15, above, we find the statement that 'There is no existing provision of law establishing a Deputy Director with statutory authority to act for the Director or to perform such functions as the Director may assign to him.' The same statement was made in the debate on the bill in the House of Representatives, 99 Cong. Rec. 2645 (1953). Our view is that it is inherent in the statutory position of the Deputy Director that the holder will assist the Director in the performance of his duties, including those vested by law in the Director.

It is our opinion, therefore, that there is no legal objection to your providing the areas in which the Deputy Director of Central Intelligence will take final action regarding the expenditure of funds under the National Security and Central Intelligence Agency acts, including the certification of expenditures provided for in section 8 of the Central Intelligence Act of 1949, as amended.

B-152708 (unpublished), November 29, 1963

A medical doctor in California was recruited for temporary employment by CIA in 1963, under a provisional 30-day contract, terminable on seven days' notice, "with the understanding that the matter of regular employment was still undetermined." He was specifically advised by the Agency Medical Staff personnel officer "that in keeping with the temporary nature of the contract being offered, no reimbursement for the transportation of your dependents or of your household effects could be provided." Permanent employment was not offered and the contract, twice extended, continued for a total of seven weeks. The former employee appealed to the Comptroller General the disallowance of transportation and dependent travel expenses, contending that he had been verbally instructed, at the time of recruitment, "to terminate your practice and ship your effects and that you did not know until after your arrival in Washington that the employee did not have the authority to authorize such action." The Comptroller General upheld the disallowance, holding that travel and transportation expenses are governed by laws and regulations, that in the absence of a statute, or a contract pursuant to statute, to the contrary, an employee is required to bear the expenses of reporting to his first duty station. Further, the government is not obligated by the errors or unauthorized acts of its agents.

44 Comp. Gen. 89, August 20, 1964

In October 1962, the Acting Director, by memorandum, reaffirmed the Agency's policy of adhering to "the compensation schedules" and other provisions of the Classification Act of 1949, "as amended, and as it may be amended hereafter" for staff personnel of the Agency. "Revision of the general compensation schedule, provisions for initial adjustment of salaries to such revised schedules . . . will be given effect in the future by the Central Intelligence Agency whenever the law is amended. The effective date of such revisions and changes will be in accordance with the provisions of law making such changes." Because this memorandum was written before July 1, 1964, the date of a statutory pay raise enacted August 14, 1964, for General Schedule employees of the Classification Act, the Comptroller General held, "we do not regard such prior action as contravening the rule against retroactive increases in compensation." Accordingly, the salary for the CIA employees covered by the 1962 memorandum "are held to be effective at the beginning of the

first pay period on or after July 1, 1964." The ruling of November 21, 1951 (31 Comp. Gen. 191, page 190 of this PART), thus does not apply in these new circumetances.

44 Comp. Gen. 708, May 12, 1965

Section 201(a) of the Dual Compensation Act (now 5 U.S.C.A. 5332(b)) provides that a retired officer of any regular component of the uniformed services is to receive the full salary of any civilian position which he holds, but during any period in which he receives such salary his retired or retirement pay is to be reduced to an annual rate equal to the first $2,000 of such pay plus one-half of the remainder, if any. Section 402(b) of that Act provides that all "other provisions of law, general or specific, inconsistent with this Act and the amendments made by this Act, are hereby repealed." Section 102(b)(2) of the National Security Act, as amended, provides that any commissioned officer serving in the office of Director of Central Intelligence is to receive his military pay and allowances, plus the difference between that amount and the pay set for the position of Director. The Comptroller General ruled that, with respect to a retired commissioned officer of the Regular Navy appointed as Director of Central Intelligence, those provisions of section 102(b)(2) "no longer are in effect" and that section 201 of the Dual Compensation Act "governs the civilian compensation and retired pay benefits which a retired Regular commissioned officer who is appointed as Director of the Central Intelligence Agency may receive in that position."

B-162026 (unpublished), August 21, 1967

An Agency employee was receiving death benefits under the Federal Employees' Compensation Act, based on the death of her husband. She became indebted to the Agency by reason of her misappropriation of Government funds. She requested the Bureau of Employees' Compensation (Department of Labor) to forward her compensation payments to CIA in liquidation of her indebtedness, but subsequently, after her Agency employment terminated, she changed those instructions and requested the Bureau to mail the payments to her bank. The Comptroller General found no authority for CIA to attach or assert a lien against the funds in the hands of the Bureau that otherwise would be payable to the former employee, but payments to her under the Federal Em-

ployees' Compensation Act "may be set off in liquidation of the indebtedness."

B-162167 (unpublished), November 2, 1967

The Comptroller General concurred in a proposed financial records retirement program covering various records of the CIA, which was submitted to him for approval as provided by section 9 of the Records Disposal Act of July 7, 1943 (44 U.S.C.A. 3309). The Comptroller General noted that under "the proposed program, you would effect disposition of the related records pursuant to the standards set forth in the schedule after conducting your own audit of accounts."

PART IX

TRANSMITTAL SHEETS